

**The Complementary Relation Between the Right and the Good in Justice as
Fairness: Implications for Liberal Democracies**

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Plagiarism declaration

I, Paige Benton, declare that this thesis is my own original work. Where secondary material is used, this has been carefully acknowledged and referenced in accordance with university requirements.

I understand what plagiarism is and am aware of university policy and implication in this regards.

Student signature



Date 16 March 2023

Ethics statement

I, Paige Benton, have obtained for the research described in this work, the applicable research ethics approval.

Date of approval 31 October 2019

Research ethics number 12112781(HUM024/0819)

I, Paige Benton, declare that I have observed the ethical standards required in terms of the University of Pretoria's Code of Ethics for Researchers and Policy Guidelines for Responsible Research.

Signed



Date 16 March 2023

Abstract and keywords

I claim that the revisions John Rawls made to his theory of justice—as seen in his political conception of justice as fairness in the revised edition of *Political Liberalism* and *Justice as Fairness: A Restatement*—result in him being able to secure justice for all persons even in their private lives. Thus, I defend his theory against common communitarian and feminist criticisms, *viz* the lack of moral community and inability to secure justice for individuals in the private domain. I demonstrate that justice is secured from the categorical requirement that all associational life and moral doctrines must adhere to the constraints of justice, by (what Rawls terms) the indirect application of the first principle of justice. The implications of and necessity for this indirect application are precisely what I interrogate in this thesis. I suggest that this indirect application requires unconditional acknowledgement and internalisation of the values of liberty and equality (political values of the first principle) into all aspects of civil society. I claim that Rawls realised this necessity for the congruence between the moral powers of persons, the spheres of society, and the right and the good and, as such, developed a complementary relation between these three features.

Coherence between these three aspects is essential; without coherence, citizens would have a split moral personality, the public and the non-public spheres would be in conflict, and the political values and the moral doctrines of individuals would undermine one another. The significance of this strict coherence is that it can ensure the adequate development of individuals' capacity for citizenship during the three stages of moral development. This results in citizens being able to form bonds of civic friendship necessary for justice as reciprocity to be realised. Thus, in this thesis, I position my argument against theorists such as Nancy Rosenblum, who argue for a more relaxed congruence between political institutions and civil society, as according to her illiberal forms of associational life can help form the necessary bonds of love and care needed for mutual cooperation in a liberal society.

In opposition to this, I claim that strict congruence is necessary; without it, a stable liberal society is not possible as the citizens would not be able to respect one another on free, equal, and mutually beneficial terms. I rely on Hochschild's sociological evidence to demonstrate that civic friendship has not been developed, due to a lack of reciprocity, impacting the negative development of one's sense of justice. I then illustrate how this lack of reciprocity is amplified by digital and artificial intelligence (AI) technologies.

The significance of this thesis is that I claim, firstly, Rawls's last revisions and works before his death demonstrate that justice is a collective non-comprehensive good that results by constraining individuals' associational life and their partial comprehensive doctrines to Rawlsian demands of justice. Thus, Rawls takes seriously the feminist and communitarian critiques he received. Secondly, I claim that this interpretation of Rawls's theory of justice cannot be conceptualised in terms of a binary presentation of the priority of the right versus the good debate and, instead, I argue for a reconceptualisation of the priority of the right versus the good as ranges on a continuum of structural relations between the right and the good.

Key words: Justice as fairness, liberal values, digital technologies, moral congruence, associational life, moral development, justice as the ultimate good.

Chapter 1: Introduction¹

1.1 The liberal democratic tradition

“How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable religious, philosophical, and moral doctrines?” (Rawls 2005, xx).

This question is as relevant today as it was 30 years ago, when John Rawls posed it as the subject of his political theory of justice for a constitutional liberal democratic society when developing *Political Liberalism* in 1993. Rawls considered this question the focus of any modern democratic society since justice could no longer be founded on the moral truth claims of the highest good as it had in the past (ibid., xxii). Historically², prescribing an ultimate notion of the good can be traced back firstly to what Rawls (ibid., xxiv) regards as the “civic religion” of ancient Greece, where Greek philosophers prescribed ideals of human life. Secondly, it is evident in the religious unity of the Middle Ages, where empires were united under a singular religion, and religious crusades were carried out in a battle to promote their version of the highest good. During the Reformation period of the sixteenth century, and the following seventeenth century religious conflicts such as that between Protestantism and Catholicism eventually lead to the rise of religious liberty. With the rise of religious pluralism, the seeds of liberalism were sprouting, values such as toleration, liberty of conscience, and freedom of thought were becoming the foundation for the justification of a

¹ In constructing this PhD I have presented aspects of my thesis at different various conferences during 2021-2022, see: Benton, P. 2022a. ‘Why Moral Agreement Is Not Enough To Address Algorithmic Structural Bias’ In: Jembere E., Gerber A.J., Viriri S., Pillay A. eds. Proceedings Of The Second Southern African Conference For Artificial Intelligence Research, pp. 608–619; Benton, P. 2022b. ‘Moral Prescription and the Dissolution of Comprehensive Moral Doctrines’ [Conference paper], at Reflective Equilibrium: 51 Years after A Theory of Justice, University of Bern, Switzerland; Benton, P. 2022c. ‘The Priority of the Good in Political Liberalism’; [Conference paper], at The Right and the Good in John Rawls’s Theory of Justice, University of Pretoria, South Africa.

² Rawls refers to examples of moral monism in European history and not Eastern or African history; please note, in this section I am tracing Rawls’s explanation of the tradition of liberal values and historical origins in European and American history, hence, this historical discussion is Eurocentric.

new political system that would lead to a separation of church and state and the constitutional enforcement of the right and liberties of individuals (ibid., xxv–xxix).

It is out of these religious historical conflicts that liberal values and tradition develop. It is in this historical tradition of liberal constitutional democracies that Rawls grounds his theory of justice. He regards moral pluralism as a natural historical outcome of political systems where intolerance once flourished. The striving for social unity under a singular comprehensive conception of the good historically gave way to increased views that social unity and the possibility of a stable and just society needed to be founded on another justification, one that respected the equal freedom individuals had to choose their own conceptions of the good life (ibid.). This is precisely why, for Rawls, the subject of his theory of justice was replacing the search for moral truth with the search for moral reasonability as the foundation of justice. Considering the historical liberal tradition, it is no longer appropriate for a theory of justice to prescribe a comprehensive notion of the good that all citizens should follow. Instead, it is essential for Rawls that a just society is one that can impartially accommodate citizens' conflicting comprehensive doctrines of the goods (ibid., xxx–xxi). Thus, “Rawls sought to construct a system of objective standards for judgment that would stand without a God, or a state, to ground it” as Katrina Forrester states in her book, *In The Shadow of Justice: Postwar Liberalism and the Remaking of Political Philosophy* (2019, 5).³

³ For a comprehensive discussion of Rawls's theory of justice as a product of its time and its historical influence, see: Forrester, K. 2019. *In The Shadow of Justice: Postwar Liberalism and the Remaking of Political Philosophy*. New Jersey: Princeton University Press.

The ‘early Rawls’⁴ in *A Theory of Justice* (1999)⁵ develops his procedural theory of justice on a comprehensive theory of liberalism, which he calls justice as fairness. The ‘later Rawls’⁶ acknowledges that a comprehensive liberalism that prescribes autonomy and individuality as the highest goods is itself problematic. It is problematic as it cannot adequately respect the liberty of conscience of citizens and the historical tradition and practices of democratic societies. Thus, the later Rawls in *Political Liberalism* (2005)⁷, after what scholars refer to as his “political turn”⁸, develops a freestanding account of justice that is not based on a comprehensive conception of the good, but rather on a political conception of justice that citizens would be considered reasonable given the liberal democratic tradition of the society to which they belong. It is in *Justice as Fairness: A Restatement* (2001, xii) that Rawls offers a reconceptualisation of justice as fairness as a form of political liberalism and not a form of a comprehensive liberalism.⁹

Rawls began writing his theory of justice from a social context that was marked by the rise of fascist, totalitarian, and authoritarian political systems, such as Hitler’s nationalism in Germany, Mussolini’s fascism in Italy during World War II, and the ideological battle between the communist politics of the Soviet Union and the liberalist politics of the United States during the Cold War. The European and American political climate of the 1940s

⁴ My distinction between the early and the later Rawls follows his own distinction in his change between *A Theory of Justice* and *Political Liberalism*. The former is a comprehensive liberalism, while the latter is dedicated to creating a political liberalism. See the following extract for this distinction: “*A Theory of Justice* hopes to present the structural features of such a theory so as to make it the best approximation to our considered judgments of justice and hence to give the most appropriate moral basis for a democratic society. Furthermore, justice as fairness is presented there as a comprehensive liberal doctrine (although the term “comprehensive doctrine” is not used in the book) in which all the members of its well-ordered society affirm that same doctrine. This kind of well-ordered society contradicts the fact of reasonable pluralism and hence *Political Liberalism* regards that society as impossible.” (Rawls 2005, 489–490).

⁵ This is the revised edition of *A Theory of Justice*, first published in 1971.

⁶ When I refer to Rawls’s later work, I am referring to his conceptualisation of justice in *Justice as Fairness: A Restatement* (2001), and the revised edition of *Political Liberalism* (2005), especially Part 4 ‘The Idea of Public Reason: Revisited’.

⁷ This is the revised edition of *Political Liberalism*, first published in 1993.

⁸ See: Weithman, R. 2010. *Why Political Liberalism? On John Rawls's Political Turn*, Oxford University Press.

⁹ For acknowledgement of this distinction, see page xvi in *Justice as Fairness: A Restatement* (2001), where Rawls states: “... changes in how justice as fairness itself is to be understood: namely, as a political conception of justice rather than as part of a comprehensive moral doctrine.”

to 1990s highlighted the tension, on the one hand, between the democratic tradition that promoted tolerance, liberty of conscience, the separation between church and state, and constitutional limits to the powers of the state, while, on the other hand, the tradition of comprehensive political systems supported prescribing a highest good, as such, prescribing all of an individual's behaviour in political, social, and cultural aspects of their lives. For Rawls, the latter, much like the political systems in the Middle Ages, was problematic as prescribing the highest good to citizens disregards the freedom and equality of persons. Rawls's aim was to find a procedure of justification for principles of justice that could form the basis of a stable society that incorporated multiple ideas of the good, while respecting the freedom and equality of all individuals.

I claim that Rawls's aim in the 1950s is as relevant today as it was then. The decline of liberal values in liberal constitutional democracies of the twenty-first century has led to raised concerns over the stability of democratic societies, as I show in Chapter 4.¹⁰ The question of where to draw the line between the church and state has not yet been resolved. This can be seen in the United States, with the rise of populist movements that lead to Trump's presidency in 2017, the storming of the United States Capitol in 2021, and the overthrowing of Roe versus Wade in 2022, to name a few events that highlight the rise of Christian Nationalism in current liberal democratic America (Whitehead, 2021 & Whitehead & Perry, 2022). These anti-democratic events are not restricted to American politics. Authoritarian, populist, and nationalist sentiments are on the rise within liberal democratic systems globally. This can be seen in Brexit, as a case of political nationalist policy in the United Kingdom, the far-right conquest seen in the rise of the 'Brothers of Italy', the victory of the ANO party¹¹ in Czech Republic, and, most recently, Macron's pension reform made without a parliamentary vote in France (Toubeau, 2016, Galston 2018, Fitzpatrick, 2023). Therefore, Rawls's concern of how we should develop a just society that acknowledges and respects the freedom and equality of individuals, while setting up society for the mutual benefit of all, is as necessary today to address as it was decades ago.

¹⁰ See: Forrester, K. 2019. 'The Crisis Of Liberalism: Why Centrist Politics Can No Longer Explain The World'. *The Guardian*. <https://www.theguardian.com/books/2019/nov/18/crisis-in-liberalism-katrina-forrester>; Galston, W.A, 2018. 'The Populist Challenge To Liberal Democracy'. *Brookings*. <https://www.brookings.edu/research/the-populist-challenge-to-liberal-democracy/>

¹¹ ANO stands for Action of Dissatisfied Citizen, (Czech: *Akce nespokojených občanů*).

This relevance is further highlighted by the amplification of these anti-democratic sentiments across the globe within liberal democratic societies by digital and AI technologies. In recent years, the AI ethics debate has grown in discourse in academia, industry, and civil society, one of the reasons being the potential disruptive impact on the humanity of these technologies due to the increasing sophistication of AI technology on public technology platforms such as Facebook, Instagram, and Twitter. There have been growing concerns over the perpetuation of bias, privacy and transparency concerns, the safety and reliability of AI technology, and questions of regulation and governance. How to combat historical prejudices and their proliferation when modelling algorithms is a huge hurdle in AI. This has led to the call for analysis of AI systems, as seen in the United Nations Educational, Scientific and Cultural Organization (UNESCO) Recommendation on the Ethics of AI¹², which was the first global normative framework for ethical AI implementation. There are also many important regional (and national) policy initiatives currently underway, such as the European Union (EU) AI Act¹³ and the United States AI Bill of Rights¹⁴. These issues may at first seem far removed from the social context of the 1950s to the 1990s within which Rawls developed his theory of justice. In Chapter 4 I show how and why this is not the case in the next section but first, I explain the complementary nature of the right and the good.

1.2 The complementary nature of the right and the good

Rawls in *Political Liberalism* (2005, 471) states: “If the so-called private sphere is alleged to be a space exempt from justice, then there is no such thing”. The focus of this thesis is three-fold. Firstly, in Chapters 2 and 3, I demonstrate my interpretation of the later Rawls, by showing that the congruence¹⁵ between the right and the good requires that justice is a constraint that must extend into the associational and moral life of individuals. Secondly, in Chapter 4, I illustrate that this congruence in current liberal societies is weak as is evident in the decline of liberal values amplified by digital technologies. The decline of liberal values is

¹² See: UNSECO Recommendations on the Ethics of Artificial Intelligence. <https://www.unesco.org/en/legal-affairs/recommendation-ethics-artificial-intelligence>

¹³ See: The Council of the European Union. <https://data.consilium.europa.eu/doc/document/ST-8115-2021-INIT/en/pdf>

¹⁴ See: The White House. <https://www.whitehouse.gov/ostp/ai-bill-of-rights/>

¹⁵ By congruence, throughout this thesis, I mean to suggest the need for agreement between different but complementary aspects of Rawls’s theory of justice. Notions such as the right and the good, the sense of justice and the sense of the good, the public and non-public sphere.

both a reason for and evidence of the moral underdevelopment of citizens seen in their inability to form civic friendship necessary for reciprocity. Thirdly, in Chapter 5, I demonstrate that this congruence between the right and the good Rawls requires for a stable and just society is best conceptualised by representing the priority of the right and the good as gradations on a continuum of structural relations between the right and the good as opposed to binary positions. Allow me to expand to show the connections between the three key arguments in my thesis.

Rawls's theory of justice is synonymous with the priority of the right (as I show in Chapter 2). It is a position he defends and clarifies among his corpus of work. Rawls shifted his position, as mentioned, in *A Theory of Justice* (1999), from a more comprehensive liberalism to a purely political theory of justice for liberal societies in *Political Liberalism* (2005). This change in focus did not reduce Rawls's commitment to the priority of the right, which is seen in his adherence to a freestanding account of justice, and a detached procedural mechanism for reasoning about principles of justice. The condition of reasonableness as the demarcator for acceptable kinds of comprehensive moral doctrines that can support an overlapping consensus, was an addition that stressed the political as opposed to the comprehensive focus of later Rawls (2001, 37–38). The condition of reasonability to moral pluralism highlights the requirement of the right as a constraint of the good, insofar as, I claim, it requires the internalisation of the political values of liberty and equality as categorical constraints on associational and private life.

This constraint of the right on the good, is necessary for the stability of justice as fairness, as it helps to ensure the necessary moral development of citizens. In this thesis, specifically in Chapter 3, I demonstrate that without the constraint of the right in associational life, an individual's capacities for citizenship may be underdeveloped (i.e., their sense of justice). This underdevelopment will be a result of the individual's freedom and equality being disrespected, which, in turn, leads to their self-respect being negatively impacted, and their inability to extend to fellow citizens a sense of trust and care. This underdevelopment would thus undermine the Rawlsian notion of justice as reciprocity.

I argue across all chapters in this thesis that to ensure the adequate moral development of citizens, necessary for civic friendship, the condition of reciprocity, and mutual cooperation in Rawlsian society must be achieved. This is achieved via the Rawlsian safeguard of the

complementary¹⁶ relation between the right and the good. This is necessary for coherence¹⁷. This complementary relation was stressed in some of the last revisions Rawls made to his theory of justice, where he placed emphasis on the unity of public and non-public spheres under the constraint of justice (ibid., 166). Without this unity, I claim, Rawlsian citizens would be left with a split moral personality, on the one hand, torn between conflicting ideas of the good in associational life, and the demands of justice on the other hand.

In Chapter 4, I show that this potential conflict between the right and the good can be seen in the instability facing liberal democracies today with the decline of adherence to liberal values. I claim this is because the right does not constrain the good in the complementary manner Rawls suggests, thus undermining reciprocity and the possibility for mutual cooperation on free and equal grounds. This lack of congruence between the right and the good is amplified by digital and AI technologies that have contributed to the spread of illiberal values and unequal epistemic participation, aiding the widespread movement of illiberal, populist, nationalist, and authoritarian sentiments.¹⁸ Therefore, I suggest that only when there is congruence between associational life and the demands of justice can stability be secured. I argue that the Rawlsian constraint of the priority of the right on the good for both local and domestic justice offers this possibility.

This then leads me to argue in Chapter 5 for a reconceptualisation of the current binary understanding of the priority of the right and the good. The binary debate (explained in the following section) between the priority of the right versus the priority of the good, I claim, cannot successfully account for the nuanced complementary relationship between the right and the good Rawls develops in his theory of justice. However, emphasising the priority of the right and the need for a freestanding theory of justice does not mean that Rawls neglects

¹⁶ By complementary, throughout this thesis, I mean to suggest that the different concepts within Rawls's theory have different functions but yet have to work together to enable a just society. These are concepts such as the right and the good, the sense of justice and the sense of the good, and the public and non-public sphere have different functions yet must work in unity for justice to be achieved.

¹⁷ In terms of coherence, throughout this thesis, I imply that the right and the good, the sense of justice and the sense of the good, and the public and non-public sphere are all distinct parts that must fit together well to ensure justice.

¹⁸ See: El-Bermawy, M. 2016. 'Your Filter Bubble is Destroying Democracy.' Wired. Available at <https://www.wired.com/2016/11/filter-bubble-destroying-democracy/>

the good as critics have suggested.¹⁹ He takes seriously the tradition of liberal democracy and, as such, requires that citizens commit to the political values of justice in every sphere of their lives, such as in the family, as shown in Chapters 2 and 3. This priority of liberty and equality in the most intimate aspects of citizens' lives, I claim, emphasises that justice is a collective non-comprehensive good that all reasonable citizens of justice as fairness share. This nuanced understanding of justice gets lost in the binary distinction between the priority of the right and the good.

Thus, I suggest in Chapter 5 that the nuanced complementary relationship Rawls develops between the right and the good requires a reconceptualisation of the priority of the right versus the good. Instead of the priority of the right and the good as seen as binary conflicting positions, I suggest reconceptualising the relationship between the priority of the right and the priority of the good as ranges on a continuum of structural relations between the right and the good. The aim of this conceptualisation of the continuum of the priority of the right and the good is to stress that the traditional features associated with each priority relation (explained in the next section) can be combined to create an infinite set of relations that result in different positions on the continuum for moral and political theories. To situate my argument, allow me a couple of background remarks on current debates in the literature.

1.3 Current debate and novel contribution

In the 1980s and 1990s, Rawlsian scholarship was marked by many critiques.²⁰ For this project, the most relevant were the communitarian critiques levelled by Michael Sandel,

¹⁹ This debate is discussed in detail in Chapter 4.

²⁰ Rawlsian scholarship is vast, and I cannot account for all the critiques; for a number of seminal critiques on egalitarianism, social contract doctrine, the difference principle, and public justification in Rawlsian theory that I do not engage with in this thesis, see: Cohen G. A., 2000. *If You're an Egalitarian, How Come You're So Rich?*, Cambridge MA: Harvard, chapters 8–9; Raz, J. 1998. 'Disagreement in Politics', *American Journal of Jurisprudence*, 1998, 25–52; Nussbaum, M. 2006. *Frontiers of Justice: Disabilities, Nationality, Species Membership*, Cambridge, MA: Harvard University Press, chapter 4; Nozick, R. 1974. *Anarchy, State, and Utopia*, New York: Basic Books, pages 132–133, 199; Hurley, S. 2004. *Justice, Luck, and Knowledge*, Cambridge, MA: Harvard University Press, chapter 6.

Alasdair MacIntyre, Charles Taylor and Michael Walzer, and Susan Moller Okin's feminist critique.²¹

Communitarian critics disapprove of liberal theory in general, and Rawlsian theory (directly or indirectly), insofar as Rawls shares some of the problematic assumptions of liberal political theory. Sandel, MacIntyre, and Taylor criticise the Rawlsian conception of the person as being abstract, individual, and as having a de-historised conception of personhood.²² In contrast, Walzer was critical of a conception of justice that relied on an impartial procedure in which to determine the kinds of goods citizens need as well as their distribution.²³ Moral monism is a feature generally attributed to theorists that prioritise the good, since these theorists normally prescribe an ultimate good. However, this is not always the case; moral prescription and moral pluralism can be linked, as in the case of Michael Walzer's conception of a plural conception of justice in *Spheres of Justice* (1983). In Chapter 5, I show how thinking of these categories of the priority of the right and the good as ranges on a continuum of structural relations between the right and the good and not static positions can better account for the nuances between – such as in this example of Walzer – the moral monism and pluralism distinction.

In Chapters 3 and 5, I illustrate how feminist theory is critical of liberal theory in general, especially for the separation of public and private spheres as a common design feature of

²¹ For other important feminist critiques, see: McClain, L. 1992. 'Atomistic Man' Revisited: Liberalism, Connection, and Feminist Jurisprudence, *Southern California Law Review*, 65, 1171, pp. 1171–1264; Nussbaum, M C., 1996. 'The Feminist Critique of Liberalism'. *Women's Voices, Women's Rights*. Oxford Amnesty Lectures and 1999. *Sex and Social Justice*, New York: Oxford University Press; Sharon A. Lloyd, 1995. 'Situating a Feminist Criticism of John Rawls's Political Liberalism', *Loyola LA Law Review*, 28, 1319, pp 1319–1344.

²² Sandel, M. 1984. 'The Procedural Republic and the Unencumbered Self'. *Political Theory*, 12, 1, pp. 81–96; MacIntyre, 2007. *After Virtue*, 3rd Edition. Notre Dame, Indiana: University of Notre Dame Press; Taylor, 1985. 'Atomism'. In: *Philosophical and the Human Sciences: Philosophical Papers 2*. Cambridge: Cambridge University Press, pp. 187–210.

²³ Walzer, 1983. *Spheres of Justice: A Defence of Pluralism and Equality*. New York: Basic Books, Inc.

liberal theorists, such as Rawls.²⁴ Susan Mollen Okin's feminist critique²⁵ could arguably be one of the most influential critiques levelled against Rawls. Okin (1989,10) argues that if justice does not extend into the private sphere, then women will not be able to gain justice in the public sphere. Her argument emphasises how the personal is political.

This superficial explanation of some of the core critiques of Rawlsian theory will be expanded on in Chapters 3 and 5 of this thesis. For now, it is important to outline the scholarship around the final revisions Rawls made to his theory of justice. This is necessary in order to show why, on the one hand, Rawlsian feminist critics do not think he can adequately protect individuals in the private sphere, and on the other hand, why Rawlsian communitarian critics disapprove of the lack of moral unity in justice as fairness.²⁶ This is important, since in this thesis, I claim that the last revisions Rawls makes help defend his theory from such criticisms, as justice functions as a form of social unity that extends across both the public and private spheres.

In response to communitarian and feminist critics in *A Theory of Justice*, the later Rawls in *Political Liberalism* and *Justice as Fairness: A Restatement* revises and expands explanations of notions within his theory of justice. Rawls directly acknowledges these criticisms seen in the below statement he makes in *Political Liberalism* (2005, xxix):

“This underlies much of the criticism of theory. This criticism holds that the kind of liberalism it represents is intrinsically faulty because it relies on an abstract conception of the person and uses an individualist, non-social, idea of human nature; or else that it employs an unworkable distinction between the public and the private that renders it unable to deal with the problems of gender and the family.”

²⁴ John Stuart Mill is often seen as an exception in this regard, see: Mill, J.S. and Mill, H.H.T. 2009. 'The Subjection of Women', revised edition. The Floating Press.

²⁵ See: Okin, S.M. 1987. 'Justice and Gender', *Philosophy and Public Affairs* 16, pp. 42–72; 1989. *Justice, Gender and the Family*. New York: Basic Books Inc, pp. 89–109; 1994; 1994. 'Political Liberalism, Justice, and Gender', *Ethics* 105, pp. 23–43; 2005. 'Forty Acres and a Mule for Women: Rawls and Feminism', *Politics, Philosophy, and Economics* 4, pp. 233–248.

²⁶ By 'lack of moral unity' I mean a moral community not founded on one comprehensive doctrine of the good, as I show in Chapter 5.

In Chapters 2 and 5, I demonstrate how the later Rawls validates that his conception of the person is not de-historised but rather a direct representation of the liberal historical period of the time (ibid., xli). Representing the person as free and equal with the ability for mutual cooperation grounded on a freestanding account of justice, stems from the historical liberal tradition as demonstrated in Section 1.1. of this chapter. Moreover, Rawlsian society may not promote moral monism – which, for him, would be inappropriate, given the historical context of reasonable moral pluralism of liberal democracies – yet he does account for a kind of social unity that is founded on reciprocity, civic friendship, and an understanding of the good of political society (ibid., xlvi–li).

In terms of Okin, I stated that her critique could arguably be one of the most influential critiques levelled against Rawls, simply because Rawls took her critique so seriously that he adjusted his theory to respond to her criticisms as seen in Section 50 of *Justice as Fairness: A Restatement* (2001, 162–168), and discussions of the family in part four of the revised edition of *Political Liberalism* (2005, 435–490), namely ‘The Idea of Public Reason Revised’. In doing so, as I show across all chapters, Rawls stresses the need for congruence between the public and non-public spheres to demonstrate that justice is the subject of both the public sphere (i.e., the basic structure of justice) and the non-public sphere (i.e., the background culture of justice). This can be seen by the constraint of the right extending to the family.

In liberal theory, there is debate concerning how civil society should be structured to encourage a stable and just liberal democratic society. The congruence between civil society and political institutions depends on how a liberal theorist interprets the purpose of civil society (Rosenblum 1994, 539). Nancy Rosenblum notes that generally liberal theorists begin from the assumption that there is a reciprocal relation between civil society and political institutions (ibid., 540). The degree to which associational life must cohere with political values is what is generally in question. Rosenblum (2018, 55) argues that liberal society should not require congruence ‘all the way down’ in civil society since the freedom to associate is mirrored by the freedom to dissociate as citizens see fit. Thus, if citizens wish to form illiberal associations or engage in paramilitary organisations, civil society in liberal democracies must make room for these kinds of illiberal ways of life, which I unpack in Chapter 3.

In contrast to Rosenblum’s argument²⁷, in this thesis, across all chapters, I show that the complementary nature of the right and the good for Rawls requires categorical congruence of the political values of the first principle of justice in civil society. By categorical congruence, I mean that the political values have to be upheld no matter the circumstances. In other words, in my interpretation of Rawls, I am suggesting that the political values of liberty and equality must be acknowledged within all forms of associational life and moral doctrines in the background culture of Rawls’s justice as fairness. This congruence requirement, I suggest can be seen in the addition of the demarcator of reasonable for both moral pluralism and comprehensive moral doctrines in *Political Liberalism* (2005, xx–xxi).

My reading of Rawls may appear to be at odds with the current paradigm of secondary literature on Rawls’s theory of justice. Currently, there is no consensus on what counts as a reasonable comprehensive doctrine.²⁸ Okin argues that religions that are premised on or promote the oppression of women to the degree that they do not regard women as equals to men, cannot be considered reasonable comprehensive doctrines in the first place (Okin 1994, 23–43). In opposition to Okin, Nussbaum argues that so long as comprehensive moral doctrines do not aim to limit the freedom of women (or any individual) in the political sphere—by claiming for instance that they should not have the right to vote—then inequalities between members of a doctrine that they promote due to their religious or metaphysical beliefs should be accepted (Nussbaum 2003, 488–520).

Nussbaum (2005, 29) claims that a challenge for Rawlsian readers is to navigate this debate: “To what extent may doctrines that contain metaphysical elements that appear sexist or racist be counted as reasonable?”. In this thesis, I claim that Rawls provides grounds for us to navigate this debate. Rawls in both *Political Liberalism* and *Justice as Fairness: A Restatement* requires agreement between the basic structure and the background culture by having an “indirect application of the principles of justice” to forms of associational life

²⁷ This will be discussed in Chapter 3. See: Rosenblum, N.L., 2018. *Membership and Morals: The Personal Uses of Moral Pluralism in America*, revised edition. United Kingdom: Princeton University Press; Rosenblum, N., 2020. ‘Compelled Association: Public Standing, Self-Respect, And The Dynamic Of Exclusion’, in Gutmann, A (ed.) *Freedom of Association*, revised edition. United Kingdom: Princeton University Press, pp. 75–108.

²⁸ See: Qoung, J. 2010. *Liberalism without Perfectionism*, New York, New York: Oxford University Press.

(Rawls 2001, 163). In defence of this indirect application, Rawls (in these last two books) includes quotes that may appear as contradictory, such as:

“Clearly, the two principles of justice (§13) with their political liberties are not supposed to regulate the internal organisation of churches and universities. Nor is the difference principle to govern how parents are to treat their children or to allocate the family’s wealth among them” (ibid.,10).

“Political principles do not apply directly to its internal life, but they do impose essential constraints on the family as an institution and so guarantee the basic rights and liberties, and the freedom and opportunities, of all its members” (Rawls 2005, 469).

It is precisely this understanding of an indirect application that I unpack in this thesis in Chapters 2 and 3. I demonstrate that an indirect application of the first principle of justice for Rawls means that the values of liberty and equality have to be internalised into all forms of associational life and individuals’ ideas of the good. Thus, any metaphysical or religious view needs to internalise the values of liberty and equality. The implication of this, I claim, is that the political values of justice form the basis of a non-comprehensive collective conception of the good that requires individuals to reshape their moral values and associational lives in line with the political values of the liberal democratic tradition.

I claim that this reshaping is essential, as without it Rawlsian liberal society would not be stable. The quote below shows the interconnection of the political and social worlds of Rawlsian citizens being intertwined.²⁹

“Think, then, of the principles of justice as designed to form the social world in which our character and our conception of ourselves as persons, as well as our comprehensive views and their conceptions of the good, are first acquired, and in which our moral powers must be realised, if they are to be realised at all. These principles must give priority to those basic freedoms and opportunities in background

²⁹ By intertwined, I mean to suggest that the background culture and the basic structure have to complement one another.

institutions of civil society that enable us to become free and equal citizens in the first place, and to understand our role as persons with that status.” (ibid., 41).

The stability of justice as fairness rests on the ideal of reciprocity, necessary for civic friendship. In order for Rawlsian citizens to want to acknowledge one another as free, equal and willing to cooperate on terms that are for the mutual benefit of them all, citizens need to develop the necessary capacities for citizenship. By this I mean, citizens need to have adequately developed their sense of justice, without which they will be unable to form the necessary bonds of love and care that are the foundation for civic friendship and a just society, which I demonstrate in Chapters 2 and 3.

In Chapter 4, I illustrate how this lack of reciprocity in current liberal democracies is a result of the underdeveloped moral psychology of citizens, by turning to sociological evidence from Arlie Hochschild’s *Strangers in Their Own Land: Anger and Mourning on the American Right* (2016). She highlights how her interviewees feel as if they are second-class citizens since their self-worth is not acknowledged by other citizens. This sociological evidence shows there is a breakdown of affectionate ties between citizens of the United States, thus, the condition of reciprocity has not been met. I then demonstrate that this lack of reciprocity has been amplified by digital and AI technologies, which has increased social injustices and inequalities already present in liberal democratic political systems such as the United States.

So far, I have explained how Rawls requires congruence in his political conception of justice. Why Rawls emphasises this congruence is what we turn to now. Rawls stresses the congruence between the right and the good to show how the priority of the right does not neglect the good. The priority of the right and the good are two forms of theory design moral and political theorists implement when constructing their theory. The debate between the two is largely highlighted by the tension between prioritising a rule of constraint (i.e., the right) versus prioritising conditions of the good life or end goals (i.e., the good). Theorists that are positioned in either view are seen to be supposedly in direct conflict with one another since their construction of justice and morality differs. In Chapter 5, I argue for a

reconceptualisation of the debate; allow me to briefly address the distinction of the right and the good in the current debate in order to give context to my argument.³⁰

The right could be used to refer to any action that is seen to be the correct action that ought to be carried out under a certain set of circumstances. The right could also refer to any action as the correct action to undertake in reference to a set of laws. In comparison, the good denotes the attributes of what is morally valuable in reference to goals, and what is desirable, a set of moral values or a final end. For instance, the good can refer to subjective or relative moral actions of persons following from the religious, metaphysical, or philosophical doctrines they choose to subscribe to. The good could also refer to the promotion of intrinsic or instrumental good(s) that is endorsed by a moral or political theory (Sandel 1984, 82–83, Brännmark 2005, 150–153).³¹

Theorists that give primary importance to the right are said to prioritise the right and those theorists that place emphasis on the good, prioritise the good. The priority of the right, on the one hand, is represented by theorists (such as Rawls, Kant, and Nozick) who stress the construction of a rule of constraint to guide individual behaviour in society. These rules are decided on prior to and independently of ideas of the good life. The right prescribes rules of moral obligations for citizens, insofar as persons have a duty to uphold them. This feature of theory design Rawls traces to Kant, insofar as, for Kant, a rule of constraint should be objective or impartial principles that are determined independently of circumstances and end goals. Thus, a rule of constraint is not influenced by the subjective desires, final ends, or the comprehensive doctrines of persons within that society (Rawls 1980, 519).

Thus, the priority of the right is characterised by an objective standard of justice since the laws that govern society are independent of the moral particulars of persons' end goals or desirable values. Often this position, according to Rawls, is associated with the deontological tradition, since the focus is on developing the standards of justice independently of notions of virtue, end goals, or requirements of the good life. This is what Rawls means when he states

³⁰ For an overview of the right and the good distinction and how it relates to the teleological and deontological distinction, see: Ronzoni, M. 2010. 'Teleology, Deontology, and the Priority of the Right: On Some Unappreciated Distinctions'. *Ethical Theory and Moral Practice*, 13, 4, pp. 453–472

³¹ For an overview of this distinction, see: Mahan, W.B. 1924. 'The Right and The Good in Theory and Practice', *The Monist*, 34, 1, pp. 112–130.

that the right is decided prior to, and, hence, independently of what is considered as the good in society (Rawls 1999a, 21–22). Overall, this tradition has been associated with moral pluralism as the rules of constraint can generally accommodate diverse moral values and conflicting notions of human value.

In contrast to this, the priority of the good is representative of the position of theorists who focus on determining or prescribing the ends of society or the individual. As a result, it is often associated with moral monism, as comprehensive moral prescription generally cannot accommodate for diverging human values or diverse prescribed moral ends. In contrast to the priority of the right, for the priority of the good, the ends then determine what would be the acceptable rule of constraint to follow; hence, the final ends are determined prior to a rule of constraint. These could be based on religious, metaphysical, or philosophical notions of value. The content of the good or the values promoted could either be intrinsic or instrumental goods.

This position is encapsulated by the Aristotelian tradition seen in MacIntyre's *After Virtue* (2007) and the emphasis of determining the ends of society first. Other theorists associated with this tradition would be classical Utilitarian theorists such as Moore³², Sidgwick³³, and Bentham³⁴, broadly speaking, since they focus on prescribing the end goals of value, and the rules of obligation are those that foster or are in direct alignment with the moral goals. For Rawls, the tradition of the priority of the good is also associated with teleological theories and the primary feature of principles of justice being contingent on the end goal of society (Rawls 1999a, 21–36). Given that the good is determined prior to and independently of the right, the right is subordinated to the good, as the right is regarded as anything that enables the fulfilment of the good (ibid., 44–45).

In Chapter 5, this distinction between the priority of the right and the good will be expanded on. In summary, for the priority of the right, the rule of constraint is determined, in general, from an impartial procedure and decided independently of moral particulars such as contingent aspects of the person or comprehensive conceptions of the good. In comparison,

³² See: Moore, G.E. 1993. *Principia Ethica*, (ed) Baldwin, T. Cambridge: Cambridge University Press

³³ See: Sidgwick, H. 1907. *The Methods of Ethics*. 7th edition. London: MacMillan and Co. Limited.

³⁴ See: Bentham, J. 1781. *An Introduction to the Principles of Morals and Legislation*. Reprinted Kitchener 2000. Toronto: Batoche Books.

the priority of the good's rules of moral obligation depends on the moral values or goals that they are supposed to promote (ibid.). Due to this binary distinction, theorists that either prioritise the right or the good stand in direct conflict or at least clear opposition with one another as they develop opposing arguments of justification in their theory design.

The aim of introducing the notion of a continuum of structural relations between the right and the good, introduced already in the previous section, is to offer an alternative method for interpreting the complementary nature of the right and the good Rawls develops. I argue that Rawls's nuanced understanding of the need for coherence between the right and the good is not facilitated by the current binary priority debate of the right and the good, since it cannot account for how a theorist relies on features of both positions. Instead, I claim that a reconceptualisation of the priority of the right and the good as ranges on a continuum of structural relations between the right and the good and not as opposing binary positions would help capture the complex relationship between the right and the good that Rawls develops.

To recap, here is my core argument. Firstly, I demonstrate how and why Rawls claims that the demands of justice extend to both the public and the private sphere of a liberal democratic society and the implications of this for associational and private life. Contrary to dominant Rawlsian scholarship, I claim Rawls provides the right as a constraint that must extend to all citizens' personal and political lives. This results, on the one hand, in providing justice in the non-public sphere, while on the other hand, forming a basis for social unity.³⁵ The complementary nature of the right and the good for Rawls requires this categorical congruence of the political values of the first principle of justice in civil society, to ensure the political values are not undermined in society in general and the unity of the moral powers of citizens is developed. I then demonstrate how this lack of moral unity between both the public and private spheres and the moral powers of citizens is evident in the decline of adherence to liberal values in twenty-first century democracies (amplified by digital and AI technologies). I then show how, contrary to current debate, Rawls's theory of justice has features associated with the priority of the good, such as a historical conception of the person. I suggest that this is often overlooked in scholarship due to the binary characterisation of the

³⁵ I used the word social as opposed to moral unity, as Rawlsian citizens cannot form moral unity under one comprehensive conception of the good. Rawls does not use the term moral community but explains the kind of social unity that can be achieved is by the collective agreement to uphold the political values of justice.

priority of the right and the good. Thus, I illustrate how this interpretation of Rawls's theory can better be explained by reconceptualising the priority of the right and the good as ranges on a continuum. It is now relevant to address the thesis layout.

1.4 Chapter layout

To develop a cogent argument, my thesis will take the following structure: Chapter 2 will be an exposition of Rawls's justice as fairness as his revised political conception of justice. The task of this chapter is to present a close reading of Rawls's theory to show the nuanced congruent relationship between the right and the good. My aim in this chapter is not to provide a complete overview of Rawlsian political theory. Instead, I aim to unpack the intricate and complex relationship Rawls develops in his presuppositions of justification stemming from the liberal democratic historical tradition, and the demands of justice on both the basic structure and the background culture of Rawlsian society. In this exposition, I discuss the role and subject of justice, the procedural conditions that lead to the principles of justice, the three stages of moral development necessary for just citizens, and the stability of justice as fairness. This chapter provides the necessary theoretical foundation to show how and why I claim in my interpretation of Rawls that political values must extend into the private sphere as a demand of justice necessary for congruence between the right and the good.

The aim of Chapter 3 is to expand my argument from Chapter 2 of how and why the right (in terms of adherence to the political values of liberty and equality) must be prioritised in the non-public sphere of justice as fairness. In order to demonstrate the need for this, I discuss the institution of the family to show that Rawls applies the first principle to this associational aspect of life, since it is a key institution for the first stage of moral development. Without the constraint of the right, members of an unjust family would have an underdeveloped moral psychology. It is in this chapter that I show that the internalisation of political values of liberty, equality, and equal opportunity leads to justice being a shared partial set of non-comprehensive moral values that all liberal citizens have in common. The commitment to uphold these values in the most intimate aspects of their lives enables the possibility of stability, since it safeguards the moral developments of citizens necessary for reciprocity and civic friendship. In this chapter, I contrast my argument with Nancy Rosenblum's (2018, 48) who argues for a more relaxed congruence between political institutions and civil society in liberal societies. She claims that a spillover of illiberal values in the private sphere may not

undermine citizens' commitment to liberty and equality in the public sphere. In contrast, I suggest Rawls requires a strict congruence in justice as fairness as the freedom to associate in private life and civil society cannot be on grounds that contradict the values of justice, such as illiberal values.

In Chapter 4, I demonstrate how the decline of liberal values currently seen in twenty-first century liberal democracies, specifically in the United States, is a result of a lack of strict congruence of the right over the good that I claim Rawls requires for civil society. This leads to the inability of liberal society to generate support for its own political values, which can be seen in the rise of illiberal values in authoritarian, populist, and nationalist movements by liberal citizens and their desire to denounce liberal values. In this chapter, I appeal to the sociological evidence by Hochschild in *Strangers in Their Own Land: Anger and Mourning on the American Right* (2016), who claims that her interviewees do not feel as if their self-respect is acknowledged by their fellow liberal citizens. I suggest that this sociological evidence highlights the fact that ties of civic friendship (that Rawls demands) have not adequately been established in the United States.

These fragile ties of civic friendship in the United States, as a result of a lack of reciprocity, are further amplified by digital and AI technologies. These technologies are currently perpetuating historical biases, discrimination, economic inequalities, and inequalities of opportunities. Moreover in this Chapter, I also reflect on how Rawls's theory might guide thinking in this context as a practical real-world example. Unregulated technologies have the potential to further breakdown the reciprocity necessary for a stable society. I analyse Binns's argument in 'Algorithmic Accountability and Public Reason' (2007) as an example of how Rawlsian ideas, specifically, and political philosophers, in general, can engage with ethical concerns around digital and AI technologies. I support Binns's aims to use public reason as a safeguard for algorithmic accountability in AI technologies, but suggest the need for a further safeguard, namely the necessity to audit the implicit moral assumptions underlying the stakeholders modelling the algorithms to ensure their adherence to liberty, equality and equal opportunity, in order to protect the congruence between the right and the good, so that both features of a moral theory can work together.

Following on from Chapter 4 and the need for the right and the good to complement one another, in Chapter 5, I argue that Rawls's complementary relation between the right and the good cannot adequately be explained under the current presentation of the binary

representation of the priority of the right and the good. This static depiction of the debate places theorists into either extreme alternative, whereby theorists that are said to prioritise the right neglect the place of the good. In contrast to these theorists, those that are said to prioritise the good are criticised for the right being contingent to the good. This binary relation cannot account for how justice (a prioritised rule of constraint) is a collective non-comprehensive conception of the good that extends across the private and public divides and requires the reshaping of comprehensive doctrines into reasonable comprehensive doctrines for Rawls. Additionally, the fact that Rawls works out a conception of justice for the historical tradition of liberal society could see him sharing features associated with theorists who prioritise the good, since the justification of the rules of obligation depends on historical values of a society. However, Rawls's commitment to a freestanding theory of justice, derived from an impartial procedure can accommodate a plurality of moral values. This is a core feature of the priority of the right and places him in direct contrast to the moral monism of the priority of the good. I claim then, in this chapter, that the most accurate representation of the complementary relationship between the right and the good in Rawlsian theory would be highlighting that his theory shares features associated with both priority relations.

Thus, in this chapter, I offer a reconceptualisation of the priority of the right and the good as ranges on a continuum of structural relations between the right and the good. The extremes of the continuum would be the ideals of the priority of the right on one end, and the priority of the good on the other end. How a theorist chooses to construct her theory will determine what structural relation she develops between the right and the good. Hence, for example, placing more emphasis on an objective method of evaluation would push a theorist closer towards the ideal of the priority of the right on the continuum; while a theorist that chooses to construct her moral and political doctrines in line with specific comprehensive moral values would push a theorist towards the ideal of the priority of the good on the continuum. It is at the position between these two extreme ideals of the continuum that I argue most political and moral theorising takes place, such as Rawls's political conception of justice as fairness. Lastly, in Chapter 6, I conclude this thesis by evaluating its contribution to Rawlsian literature. I summarise the findings of this research as well as propose possible areas of research for the future. Let us now turn to an exposition of Rawls's theory of justice.

Chapter 2: Recounting Rawls

2.1 Introduction

The task of this chapter is to present a close reading of Rawls's theory of justice in its final form in terms of the last revisions he made to his theory. My aim is not to give a complete overview of Rawlsian political theory.³⁶ Instead, I aim to unpack the intricate and complex relationship Rawls develops between his presuppositions of justice and the consequences of the initial agreement (i.e., the principles of justice) from the original position.

This analysis will lay the theoretical groundwork for Chapters 3, 4, and 5. In Chapter 3, I show how the right is prioritised in the non-public sphere of Rawlsian society, that there is no sphere in which the requirements of justice do not enter, thus I argue justice is the collective good all reasonable citizens share. In Chapter 4, I demonstrate how the lack of congruence between the right and the good is evident in the instability (heightened by digital and AI technologies) of liberal democracies in the twenty-first century. Thereafter, in Chapter 5, I illustrate that this complementary relation Rawls develops between the right and the good situates his theory with features of both priority relations. In terms of the priority of the right, Rawls relies on features such as moral pluralism, and a political conception of justice that is freestanding. In contrast, Rawls's theory of justice has features of the priority of the good, namely the historical embeddedness of his theory, due to the fact that he relies on the latent moral sentiments of liberal democratic tradition. It is the political values of the liberal tradition that extend to both the public and private sphere. To account for this complex relationship Rawls develops between the right and the good, I suggest the priority of the right versus the good is better characterised on a continuum of structural relations between the right and the good than as binary positions as currently portrayed in Rawlsian debates.³⁷

³⁶ For a comprehensive overview, see Freeman, S.R. 2010. *Rawls*. London: Routledge.

³⁷ For Rawls's characterisation of the right and the good as binary positions, see his articles: 1975. 'Fairness to Goodness'. *The Philosophical Review*, 84, 4, pp. 536–554; 1980. 'Kantian Constructivism in Moral Theory: The Dewey Lectures'. *The Journal of Philosophy*, 77, 9, pp. 515–572; 1985. 'Justice as Fairness: Political not Metaphysical'. *Philosophy & Public Affairs*, 14, 3, pp. 223–251; 1988. 'The Priority of the Right and Ideas of the Good'. *Philosophy & Public Affairs*, 17, 4, pp. 251–276. In *A Theory of Justice* (1999), see Chapter I Section 5, Chapter IV Sections 39 and 40, Chapter VII Sections 60 and 68, Chapter IX Sections 79 and 82. In *Political Liberalism* (2005), see Lecture V 'The Priority of the Right and Ideas of the Good'. In *Justice as*

To lay this groundwork, this chapter firstly addresses the premises Rawls relies on to construct his theory of justice, namely, the subject and role of justice, the conditions of the initial agreement, the conception of the person, the three stages of moral development, and the concept of reasonable moral pluralism. I have identified these as the essential premises in justice as fairness as they are the foundational claims of justice. These are claims regarding the traits justice should have, the conditions under which we arrive at just principles, the essential features of a just society, and the capacities needed to be just citizens. I refer to the three features of moral development as one of the presuppositions of justice as they are the conditions necessary for citizens to develop their sense of justice, and for the condition of reciprocity to be realised.³⁸ In this chapter, I explain these three stages in the last section under the constraint of justice, as it is important to understand the moral psychological development of citizens in light of the social conditions that help facilitate this development.

Thereafter, I turn to the outcome of the initial agreement to analyse the implications of the above conditions of justice in Rawls's notion of justice as fairness.³⁹ I examine the importance of stability for justice. For Rawls justice must be freestanding due to circumstances of reasonable moral pluralism, liberty of conscience, and freedom of

Fairness: A Restatement (2001), see part IV 'Institutions of a Just Basic Structure' especially Sections 43 and 47.

For secondary scholarship on Rawls's binary characterisation of the right and the good, see: Kymlicka, W, 1988. 'Rawls on Teleology and Deontology'. *Philosophy & Public Affairs*, 17, 3, pp. 173–190; Rorty, R. 1988. 'The Priority of Democracy to Philosophy'. In: *The Virginia Statute for Religious Freedom: Its Evolution and Consequences in American History*, edited by M. D. Peterson and R. C. Vaughn. Cambridge: Cambridge University Press, pp. 257–282; Freeman, S. 1994. 'Utilitarianism, Deontology and the Priority of Right'. *Philosophy & Public Affairs*, 23, 4, pp. 313–349 and Kocaeli, A.D. 2011. 'On the Priority of the Right to the Good'. *Kant-Studien*, 102, pp. 316–334.

³⁸ The Rawlsian condition of reciprocity contains two aspects, as I explain in Chapter 2. The first aspect is what I term social reciprocity; by this I mean the social conditions necessary for reciprocal relations to be achieved. This aspect of reciprocity follows from the moral development of citizens, their cultivation of a sense of justice, and ties of civic friendship. All of these aspects enable citizens to have the ability and desire to engage on societal terms that are for the mutual benefit of all citizens. The second aspect is economic reciprocity, safeguarded by the second principle of justice which protects the distribution of goods in a reciprocal manner in line with the conditions of fair equality of opportunity and the difference principle.

³⁹ As discussed in the introduction, when I refer to justice as fairness throughout this thesis I am referring to justice as fairness as Rawls's revised political conception of justice and not his comprehensive conception of justice.

association. By freestanding, Rawls requires that justice must not prescribe or rely on a singular comprehensive conception of the good. Justice as a freestanding view (not dependent on one comprehensive doctrine for its formulation) is a feature of his theory of justice that became synonymous with the stance of the priority of the right, a position Rawls continuously reiterates the importance of throughout this theory.⁴⁰

This discussion will illustrate how political stability is a result of balancing, on the one hand, a justification for the principles of justice that is independent of a comprehensive good, against, on the other hand, creating a society that gives citizens the freedom to pursue their comprehensive conceptions of the good under the constraint of the right. I illustrate this balance in further detail when discussing the public and non-public spheres and the respective forms of reason. Lastly, I introduce a discussion of the concept of the family to continue this investigation into the limits of justice and to clarify the demands of justice on Rawlsian citizens.

In demonstrating the intricate relationship between the requirements of justice and comprehensive moral doctrines in justice as fairness, I hone in on key sections, paragraphs, and sentences across Rawls's later works⁴¹ to unpack what he refers to as "the complementary relation between the right and the good" (Rawls 2005, 514). In unpacking this complementary relation, I aim to show, in the following chapters, how the stability of justice as fairness rests on the priority of the right in the private sphere. Thus, I explicate how no space within Rawlsian society is exempt from justice, this is to ensure coherence between the right and the good throughout his theory of justice.

Before I turn to my exposition, allow me a few background remarks. Since this chapter is a close reading of Rawls's primary works, secondary Rawlsian scholarship will only be referred to in footnotes as additional reading for the expansion of concepts. Moreover, Rawls's body of work is vast, and an in-depth presentation of all his work exceeds the scope of this thesis. As mentioned in Chapter 1, it is the relationship between the public and non-public spheres that I interrogate in this thesis. For that reason, I have chosen to exclude *The*

⁴⁰ See footnote 37 for a list of Rawls's work where he defined and clarified this relation.

⁴¹ When I refer to Rawls's later work I am referring to his conceptualisation of justice in *Justice as Fairness: A Restatement* (2001), the revised edition of *Political Liberalism* (2005), especially Part 4 'The Idea of Public Reason: Revisited'.

Laws of Peoples (1999)⁴², since I am not focused on global justice. In contrast, the level of domestic justice is the term he uses to refer to the justice of the basic structure and the background culture, which is the focus of *A Theory of Justice* (1999)⁴³, *Political Liberalism* (2005)⁴⁴ and *Justice as Fairness: A Restatement* (2001). Rawls refers to the application of principles of justice to voluntary associations as applicable to securing justice in the background culture. To the degree that the basic structure and the background culture of society inform one another, aspects of justice in the background culture are discussed. Rawls's last revisions focused on this connection in terms of showing the complementary nature of the right and the good across the basic structure and the background culture.

To read *A Theory of Justice* (1999), *Political Liberalism* (2005), and *Justice as Fairness: A Restatement* (2001) as a collective unit would be a misinterpretation of the growth of Rawls's ideas. Instead, I aim to take Rawls's last, unfinished works, as his revised position. This includes *Justice as Fairness: A Restatement* (2001), the revised edition of *Political Liberalism* (2005) especially Part 4 'The Idea of Public Reason: Revisited'. This is not to suggest that I exclude *A Theory of Justice* or the numerous articles Rawls wrote between 1957 and 2001, I refer to them when discussing notions that have not changed in this work. These include a commitment to the liberal and social contractarian tradition, the content of the principles of justice, the procedural mechanisms of the original position and the veil of ignorance, reliance on reflective equilibrium, and the moral powers and moral psychology of persons, to name a few. *Justice as Fairness: A Restatement* (2001) and the revised edition of *Political Liberalism* (2005) especially Part 4 'The Idea of Public Reason: Revisited' are integral to the revisions he made in response to communitarian and feminist critics.⁴⁵ These early changes (in the first edition of *Political Liberalism*) include an overlapping consensus, reasonable as a demarcator for comprehensive moral doctrines and persons, and creating a freestanding justification for justice. Later changes (in the revised edition of *Political*

⁴² This is the revised edition of *The Law of Peoples*, first published in 1993.

⁴³ This is the revised edition of *A Theory of Justice*, first published in 1971.

⁴⁴ This is the revised edition of *Political Liberalism*, first published in 1996.

⁴⁵ The communitarian critics will be discussed in detail in Chapter 5. For an over view of communitarian critics, see: Mulhall, S & Swift, A. 1992. *Liberals and Communitarians*. Oxford: Blackwell Publishers. For an overview of feminist critics, see: See Nussbaum, M. 2002. 'Rawls on Feminism', in Freeman, S. (Ed.). *The Cambridge Companion to Rawls* (Cambridge Companions to Philosophy). Cambridge: Cambridge University Press.

Liberalism and Justice as Fairness: A Restatement) include bringing the family into the basic structure, viewing the public and non-public spheres as interconnected, and emphasising that the priority of the right insists on congruence between the right and the good. In this chapter, I provide an overview of these ideas to demonstrate how they fit together in Rawls's theory of justice. Let us now turn to the presuppositions of justice.

2.2 Presuppositions of justice

I The role and subject of justice

Rawls considers the basic structure of society as the main subject of justice (Rawls 2001, 10). The basic structure denotes the essential institutions that structure the lives of citizens, such as the political constitution, organisation of the economy, the judicial system, and later on he also added the family⁴⁶ (ibid.). All these institutions exist within the basic structure as they are non-voluntary institutions; they are core to citizens' participation within society. The basic structure is the foundational sphere of justice for Rawls since the institutions here regulate what Rawls refers to as "background justice" (Rawls 2005, 257–88). Citizens' aspirations, social circumstances, careers, and personal opportunities can be realised to the degree to which the basic structure of society is just (Rawls 2001, 13–14). For Rawls, creating just institutions in the basic structure would permeate just decisions throughout society in general, hence its importance. This is precisely why the initial agreement for Rawls is centred on an agreement of the principles that would regulate this structure.

The principles of justice are seen to be just if they remove inequality from the basic structure while securing the liberty of citizens. The principles that Rawls suggests could achieve this would be first, the 'liberty principle', which safeguards the equal basic right of liberty of citizens (Rawls 2001, 42). The second principle has a twofold role; firstly, it ensures fair equality of opportunity among citizens and, secondly, it restructures social inequalities to only allow those if they benefit the worst-off members of society. This latter aspect of the principle is referred to as the difference principle (ibid.).⁴⁷ The worst-off members of society

⁴⁶ Due to the critique Susan Mollen Okin raised to Rawls regarding the place of the family and the role of women within the family, Rawls adjusted his theory to include the family as part of the basic structure of society, see Section 50 in *Justice as Fairness: A Restatement*.

⁴⁷ For a discussion of how Rawls secures the liberties and equalities for poor citizens, see: Lötter, H. 2010. 'Refashioning Rawls as a True-Champion of the Poor'. *Politikon*, 37, 1, pp. 149-171.

are persons who have the worst chances of achieving their rational plans of life⁴⁸ due to their social contingencies⁴⁹ that result in them having a disproportionately inadequate share of economic resources. I return to the discussion of the principles of justice in the following section in my discussion of constitutional essentials; for now, it is important to address the subject of justice.

For Rawls (2001, 10), the two principles of justice are not supposed to directly regulate the internal organisations of voluntary organisations such as churches and universities, as this regulation would hinder the freedom of association of persons in civil society. Thus, for Rawls, the principles of justice are only to apply directly to the basic structure and indirectly to all other voluntary organisations, associations, and institutions, to secure citizens' core rights to freedom of association and freedom of conscience. Further on in this chapter, I unpack exactly what Rawls means with his distinction of direct application to the basic structure and the indirect application of the principles of justice to the 'background culture of society'. For now, it is important to first define the role and subject of justice. This is important to understand Rawls's intention for making the basic structure of society (i.e., the political sphere) the primary subject of justice in his exposition of justice as fairness.

Rawls aims to develop a political philosophy and not a moral philosophy. Rawls refers to his theory as a political conception of justice (Rawls 2001, xii). He defines a partially comprehensive theory as a theory that prescribes some moral values but explains that these values are not exhaustive, since they can accommodate other moral values (Rawls 2005, 13). In contrast, fully comprehensive conceptions are those that are exhaustive and cannot accommodate other moral values, since the doctrine (whether philosophical, metaphysical, or

⁴⁸ A rational plan of life consists of a person's chosen ends. These ends are informed by a citizen's conception of the good. Moreover, it is informed by an individual's desires, affiliations and loyalties, which give rise to duties and obligations that individuals will have for persons and associations in their life plan. A rational life plan is subjective, insofar as one develops a rational life plan in line with one's own context in which they are situated. Some elements that impact an individual's situatedness are the social, economic and religious environment an individual is born and exists within. As will become clearer throughout this chapter and the next, the principles of justice constrain the potential life plan citizens have, by Rawls stating that the principles of justice are to apply indirectly to the life plans and associations of citizens. See Rawls, 1985. 'Justice as Fairness: Political not Metaphysical'. *Philosophy & Public Affairs*, 14, 3, pp. 223–251.

⁴⁹ The three main types of social contingencies Rawls discusses in *A Theory of Justice* (1999) include class origins, natural endowment, and fortune and luck, see pages 258—259.

religious) is completely developed to cover all areas of life. Instead, a comprehensive conception prescribes values that define human value, the ideals of character, and associational forms of life and relationships (ibid.).

Rawls's theory of justice is political since the values that are promoted in a Rawlsian society are a partial set of political values that prescribe substantive moral values of the liberal political tradition. It is these political values that constrain Rawlsian citizens' possibilities for how they choose to define human values, and ideals of characters, and form associations and relationships. Yet these political values are not exhaustive as they can coexist with other comprehensive doctrines. Rawls contrasts his political conception of justice as fairness against comprehensive doctrines, such as Kant's and Mills's comprehensive liberalism. He aims to show that his focus is on developing the requirements for justice independently of prescribing a comprehensive moral doctrine, in the hope of arriving at political consensus that does not rest on promoting one singular comprehensive moral doctrine or notion of moral truth (ibid., 14).

This is not to suggest that Rawls neglects the sphere of morality, rather the political is prioritised and the moral is subordinated. This is the point I am arguing throughout this thesis, that political values are the boundaries of restraint for individual's moral doctrines and values. This is a core feature of this theory known as the priority of the right. The debate of the right and the good was defined in Chapter 1 and will be discussed in depth in Chapter 4. Here it is pertinent to understand how this priority relation is represented in his theory. For later Rawls, the priority of the right represents developing the content of justice independently of comprehensive doctrines of the good. Rawls shifted his position in *A Theory of Justice* from a more comprehensive liberalism to a political liberalism in *Political Liberalism*.⁵⁰ Despite this shift in the comprehensiveness of his theory of justice, Rawls, across his body of work, retains his emphasis on the priority of the right (i.e., developing principles of justice from an impartial method that is independent of comprehensive conceptions of the good). It is the content and conditions of realisation of the right that he

⁵⁰ See *Political Liberalism* (2005, xvi); Rawls states: "The serious problem I have in mind concerns the unrealistic idea of a well-ordered society as it appears in *A Theory of Justice*. An essential feature of a well-ordered society associated with justice as fairness is that all its citizens endorse this conception on the basis of what I now call a comprehensive philosophical doctrine."

refined in his revision of *Political Liberalism* and *Justice as Fairness: A Restatement*. It is the implications of this refinement that I discuss in Chapter 3 of this thesis.

The priority of the right refers to developing an objective⁵¹ procedure in which to decide upon principles of justice, as well as creating political values that are general and do not rely on a comprehensive notion of the good (Rawls 2005, 173–174). By the ‘objective method’, I am not suggesting this is a method that is characterised by universal detachment. Rawls makes it clear that the moral foundation underlying his objective procedure is the moral values of modern constitutional liberal democracies. Instead the role of objectivity here is that the procedure in which one reasons about justice, must be from a detached position insofar as one must reason independently of their personal circumstances, desires, and moral values. The priority of the right then is the requirement of an impartial procedure to arrive at principles of justice that are impartial to the extent that they do not outright promote any person’s or group’s desires or comprehensive moral doctrines.⁵² The substantive moral content of the right is the ‘five ideas of the good’ laid out in Lecture V of *Political Liberalism* (2005, 179–211).

The five ideas of the good all share two features. Firstly, these ideas of the good are political goods as all citizens of a modern liberal constitutional democracy share them. Secondly, because they are political and all political ideas are freestanding, these political conceptions of the good are not premised on any comprehensive moral doctrine (Rawls 2005, 175). Thus, these ideas of the good form part of the objective procedure of reasoning. This is due to the fact that these ideas of the good are goods that all citizens of liberal democratic societies share regardless of their desires, moral values, or social circumstances. The first of the five ideas of the good is goodness as rationality.

Goodness as rationality accounts for the understanding that citizens have rational life plans that are diverse and particular to their unique circumstances. Rawls referred to this as the ‘thin theory of the good’ in *A Theory of Justice* (1999, 41–43), to demonstrate that the initial agreement is constructed with a political understanding of the person and their desires. In

⁵¹ For a discussion of the role and meaning of objectivity, see: Nussbaum, M.C. 2001. ‘Political Objectivity’, *New Literary History*, 32, 4, pp. 883–906.

⁵² This idea is what Peter de Marneffe regards as neutrality of grounds; see: Marneffe, Peter de, 1990. ‘Liberalism, Liberty, Neutrality’, *Philosophy & Public Affairs*, 19, 3, pp. 253–274.

other words, goodness as rationality accounts for the fact that a conception of justice must acknowledge that there are general goods, such as citizens' basic rights and liberties that need to be taken into account and met (Rawls 2005, 176).

The second idea of the good is primary goods. Rawls constructs primary goods as political goods that all citizens need in order to be able to carry out their rational life plans. Political goods are goods that all citizens share regardless of their comprehensive doctrines, desires, moral values, and social circumstances. This is why political goods can form part of the content of justice as these goods do not promote one specific comprehensive doctrine. There are five primary goods: first, securing basic rights and liberties of persons; second, freedom of movement and choice of occupation; third, equal access to positions of institutional power; fourth, securing equality in income and wealth; and fifth, to help foster citizens' self-respect. The additional two are possibilities of examples for extending the list, these are securing leisure time and protecting citizens' mental state (ibid., 181).⁵³

The third idea of the good is "permissible conceptions of the good" (Rawls 2005, 176). This idea of the good accounts for the condition that only reasonable comprehensive moral doctrines and not all permissible comprehensive doctrines are acceptable in his theory of justice as fairness. This idea will be discussed in Section 2.3 of this Chapter. What is important to note now, is that this condition is the distinguishing feature of the priority of the right for the later Rawls, as the demarcation between reasonable and unreasonable moral doctrines⁵⁴ is the degree to which these doctrines are able to adhere to the requirements of justice.

Political virtues are the fourth idea of the good. Political virtues are the political ideals of moral character that citizens living in a Rawlsian society are encouraged to have. This condition encapsulates the idea of justice being morally substantive, in that citizens learn that it is necessary to affirm certain virtues as a citizen. This includes virtues such as "fair social cooperation, civility, tolerance, sense of fairness, and mutual trust" to name a few (ibid.,

⁵³ In Lecture V, Section 3 and 4 of *Political Liberalism* (2005, 182–183), Rawls responds to the criticisms he received by Sen and Arrow on primary goods. He states that there are four possible variations that impact citizens' desires for primary goods. These are variations in moral and intellectual capacities, physical ability, conceptions of the good, and an individual's preferences and desires.

⁵⁴ For some implications of this distinction between reasonable and unreasonable, see: Kelly, E, and McPherson, L. 2001. 'On Tolerating the Unreasonable', *The Journal of Political Philosophy*, 9, pp. 38–55.

193). These political virtues are political because they do not belong to a comprehensive moral doctrine. They are general moral values of a liberal democracy that the majority of citizens can uphold while at the same time adhering to their multiple comprehensive conceptions of the good. Rawls does note that not all comprehensive conceptions of the good can uphold political virtues, he claims that persons who hold fundamentalist versions of any comprehensive doctrine, will not be able to (ibid., 159). I return to this discussion of the kinds of comprehensive doctrines that can exist and the restriction of the right on associational life in Section 2.3 of this chapter and again in Chapter 3.

The final political idea of the good is the understanding of the good of political society. Since society is not based on one singular comprehensive doctrine, justice as fairness⁵⁵ does not develop a moral community⁵⁶ in the traditional understanding of moral community⁵⁷, whereby citizens share the same moral, philosophical, religious, or metaphysical views of life. Political society is an instrumental good to the degree that citizens choose to cooperate and be part of a fair society for the benefit of having the best chance to be able to achieve their rational plans of life. In this way, Rawlsian citizens understand engagement in political society as a political good as it is only through joint engagement and cooperation in the political sphere that citizens are able to live a free and meaningful life (ibid., 173–174). This is only one understanding of the good of political society. The second is political society is also an intrinsic good. The intrinsic good of political society is justice. Justice is the good for a democratic society that can only be achieved when all citizens through mutual cooperation adhere to the requirements of the right (ibid., 201–207). Although later Rawls does not adhere to a comprehensive liberalism, he still retains his example of mutual cooperation of a society as comparable to members of a team. Thus, the later Rawls still insists that justice is

⁵⁵ Note that I am referring to justice as fairness as the reformulated political theory of justice reformulated in *Justice as Fairness: A Restatement* (2001), I am not referring to it as a comprehensive liberal theory as presented in *A Theory of Justice* (1999).

⁵⁶ Rawls does not use the term ‘community’ to refer to the social unity or shared moral fibre of his liberal society; see the distinction on page 21 in *Justice as Fairness: A Restatement* (2001).

⁵⁷ I discuss this critique in Chapter 4, but for an overview of the lack of moral community in liberal theory and Rawls’s theory of justice, in particular, see: Gutmann, A. 1985. ‘Communitarian Critics of Liberalism’, *Philosophy & Public Affairs*, 14, 3, pp. 308–322; Walzer, M. 1990. ‘The Communitarian Critique of Liberalism’. *Political Theory*, 18, 1, pp. 6–23.

the good that results from the collective participation of all citizens, as will become clearer in this thesis.

Overall, these five ideas of the good share the essential feature that they prescribe normative moral claims to citizens, yet these claims are general in that they can simultaneously coexist among and act as a demarcator for competing reasonable conceptions of the good. In *Political Liberalism*, Rawls states: “The right and the good are complementary: no conception of justice can draw entirely upon one or the other but must be combined both in a definite way” (ibid., 173).

The priority of the right for Rawls does not mean that all comprehensive ideas of the good can be accounted for, rather it implies that the political ideas of the good of justice as fairness are political, insofar as all citizens are able to affirm them, while still upholding their comprehensive conceptions of the good. The extent of the complementary relationship between the right and the good is investigated in depth in the following chapter. For now, let us turn to the possibility of developing the content of the right independently of comprehensive doctrines of the good.

II The conditions and constraints of the initial agreement

The idea of an initial agreement leads us to the second presupposition, namely, that a just society is one founded on a fair agreement between citizens. Rawls, as a proponent of a specific kind of social contractarianism, takes agreement as the legitimatising factor for a just society.⁵⁸ The outcome and the conditions of the agreement are specific to ensure it is just. Allow me to address the outcome of the agreement before I address the conditions of the agreement.

The focus of the initial agreement is on developing an agreement on the basic liberties and equalities of citizens, what Rawls terms the ‘constitutional essentials’ (ibid., 158–159). The principles of justice, then, are the outcome of the agreement that regulates the constitutional essentials. Constitutional essentials are the foundational aspects of society that, according to Rawls, need absolute consensus. The first aspect of the constitutional essentials is agreement

⁵⁸ For discussion of the social contract tradition, liberal theory, and Rawls, see Freeman, S., 2007. *Justice and the Social Contract*, New York: Oxford University Press; Boucher, D. and Kelly, P. 2004. *The Social Contract from Hobbes to Rawls*. New York: Routledge.

on “the general structure of government and the political process: the powers of the legislature, executive, and the judiciary; the scope of majority rule” (ibid., 227). The second aspect is on agreement of the “equal basic rights and liberties of citizenship that legislative majorities are to respect: such as the right to vote and to participate in politics, liberty of conscience, freedom of thought and of association, as well as the protections of the rule of law” (ibid.). The first principle of justice, as mentioned earlier secures equal basic rights and liberties of citizens, and this first principle addresses the second aspect of the constitutional essentials (ibid., 228–229). Parts of the second principle of justice, namely, equal opportunity and a ‘social minimum’, also form part of the constitutional essentials, since these values of liberty, equality, and equal opportunity are necessary for a fair society to be possible (Rawls 2001, 47–50). Rawls affirms this stance when he claims, “some principle of opportunity is surely such an essential, for example, a principle requiring at least freedom of movement and free choice of occupation” (ibid.). However “fair equality of opportunity is not considered a constitutional essential and neither is the difference principle” (ibid., 48). When Rawls states that aspects of the principle of opportunity are part of the constitutional essentials, he is saying a social minimum and a society that is open to the degree that it does not prevent persons from occupying certain positions are part of the constitutional essentials. The social, and economic policies that can be implemented to ensure the constitutional essentials are realised are not part of the constitutional essentials. This is not to suggest that the principles of justice are separate or lack cohesion. The first principle, securing the basic liberties of individuals, has an impact on what are acceptable distributive standards. The two principles, although separate, must work together in unity to ensure basic liberties and equalities of citizens are protected (ibid., 46).

The two principles of justice have two different functions in terms of developing justice within Rawlsian liberalism. The first principle of equal liberty is a constitutional essential insofar as it helps to affirm the basic liberties of all citizens. The second principle is the principle of distributive justice, which addresses social and economic inequalities insofar as they require securing fair equality of opportunity and a just distribution of economic disparities (Rawls 2005, 228). The two principles of justice have two different roles for Rawls, but these roles have to be aligned with one another. In other words, a Rawlsian society cannot have ‘background’ institutions that regulate social and economic inequalities that undermine the basic freedoms of citizens as secured by the first principle. The second principle has to help realise the constitutional essentials of a fair cooperative society since

they safeguard the liberty and equality of all citizens (ibid., 230–231). This realisation is possible as the second principle ensures that social and economic policies align with and facilitate the political values of liberty, equality, and equal opportunity. The social and economic policies that are to be implemented in line with the constitutional essentials are not themselves constitutional essentials, as there will be disagreement over the application of these policies. Although Rawls does not include fair equality of opportunity as a constitutional essential, he does include equality of opportunity as a constitutional essential. Similarly, while he does not include the difference principle, he does include a social minimum.⁵⁹ What is important to note is that Rawls acknowledges that there may be disagreement over distributive policies that can best realise the political values, but there cannot be disagreement over the political values themselves. This agreement is necessary as it is the first consensus in society (i.e. the constitutional consensus). It is this consensus that forms the foundation for an overlapping consensus that I discuss in Section 2.3 of this Chapter. Now that I have discussed the two principles of justice as the outcome of the agreement and their role in justice now, it is important to address the conditions of the initial agreement that enable the reasoner to arrive at these principles.

For Rawls, his society is considered just if this initial agreement can be reached between free and equal citizens situated in a position of equality. Rawls acknowledges that citizens are situated in unequal positions in society due to inequalities in the setup of the basic structure of society, thus, if any actual agreement were to take place under these conditions, the agreement itself would not be fair. Thus, Rawls insists on the initial agreement as a hypothetical agreement (1999a, 15–18).⁶⁰ It is essential that the agreement is abstract since a just society can only be a result of a fair agreement, and a fair agreement can only be reached under impartial circumstances such as those he defines in the original position.

⁵⁹ Rawls does not discuss directly what a social minimum entails; we can infer the primary goods would form the content of the goods that need to be distributed in terms of a social minimum so that all citizens are able to form a decent life. My post-doctoral research will focus on developing and constructing a more detailed description of the possible goods that could be included in a Rawlsian social minimum.

⁶⁰ In *Justice as Fairness: A Restatement* (2001, 16–17), Rawls reaffirms his position against critics such as Sandel and Nozick, who claim that hypothetical consent has no moral binding force. See: Nozick, R. 1974. *Anarchy, State and Utopia*. New York: Basic Books Inc, pp. 208–209; Sandel, M. 1982. *Liberalism and the Limits of Justice*. New York: Cambridge University Press, pp.109–113.

The original position should be understood as a rational process of reasoning characterised by certain essential constraints to ensure the outcome of the agreement is fair and equal. The figurative notion Rawls gives to bundle these constraints is the veil of ignorance (Rawls 2001, 18).⁶¹ The veil of ignorance ensures fairness and equality insofar as it ensures that ‘artificial’ agents – reasoning from the stance of the original position – reason about the principles of justice independently of their particular desires, social circumstances, and moral values, or what Rawls terms their “arbitrary contingencies” (Rawls 1999a, 14). In deciding on the content of the principles of justice, artificial agents⁶² reason independently of any knowledge, such as their gender, age, race, class, innate or cultivated abilities, interests, the voluntary organisations to which they belong, and their metaphysical, religious, or philosophical views of life that inform their conception of the good (ibid., 118). Given that the procedural constraints of the original position impose the same constraints on the reasoner, any person can reason from this point of view provided they adhere to the restrictions of the veil of ignorance.

The knowledge that one can reason from is general, as opposed to particular knowledge about their society, such as reasoning with the general laws and theories in mind (ibid., 119). For example, individuals behind the veil of ignorance will be aware of the structure of their society, such as it being a constitutional liberal democracy where certain values such as liberty and equality are promoted. Yet, they would be unaware of particulars such as their country’s gross domestic product and their predisposition to climate change, or their natural resources. As stated above, the reasoner must reason apart from their moral particulars such as class, gender, and religious views to name a few, yet they can reason with i.e., the primary goods in mind. This is because primary goods are political goods that all citizens need and, according to Rawls, would want to secure as they benefit all citizens no matter their conception of the good (Rawls 2005, 187–190).

This restriction of information on the particulars of both individuals and society is essential to ensure that the highest degree of fairness and equality is reached in the original position. For Rawls, restricting information ensures fairness in that artificial agents cannot be swayed to

⁶¹ For a detailed discussion of the concept, criticisms and implications of the original position and veil of ignorance see: Hinton, T, 2016. *The Original Position*, Cambridge: Cambridge University Press.

⁶² My use of artificial agents here is to denote the idea of hypothetical and not an actual reasoner reasoning in line with the constraints of the original position and the veil of ignorance.

choose principles that will be to their benefit. Thus, for Rawls, justice is a result of a fair procedure that is impartial. The impartiality of the original position is determined by the thickness or thinness⁶³ of the veil of ignorance. In the initial agreement, the veil of ignorance is thick as artificial agents need to reason about the principles of justice with only minimal information. Once the principles have been decided on, during their implementation, the ‘veil’ becomes thinner, and more information is made available to the agents.

This ‘veil’ is metaphorically lifted, during what Rawls terms, the four-stage sequence. The first stage is the initial agreement where the principles of justice are chosen. The second is the constitutional convention; here the constitution is constructed in line with the principles of justice. The third, the legislative stage, is where one reasons about the kinds of legislative rules that can be implemented that align with and help realise the principles of justice initially chosen. The final is the application of the legislative rules by government administrators and the judiciary. During each stage, more information is slowly introduced to ensure that the necessary general (and, in some cases, particular) facts about the society are taken into account (Rawls 2001,48). Thus, the four-stage process is not an actual or historical process, it is a hypothetical process of reasoning. It extends the rational process of reasoning of the original position on the foundational principles of justice to the fair application of the principles on the structure of government, the legislative rules, and the application to citizens in their social context (Rawls 2005, 397–399).

Rawls states that the structure of any liberal democratic society such as justice as fairness cannot be implemented in its final form. There will always be reasons to revise an already just constitution, to ensure and help realise that application of the principles of justice is continually revised to guarantee that the liberty and equality of persons can be better realised. This is why, for Rawls, “the ideal of a just constitution is always something to be worked toward” (ibid., 401). The four-stage sequence then is a rational hypothetical thought process that any citizen can invoke to test whether the application of the two principles of justice is realised in the best plausible way. The four-stage sequences account for the understanding of citizens’ ability to reason about political and social policies via the conditions that enable a fair procedure of reasoning. This is why Rawls disagrees with Habermas’s claim that a just society cannot “reignite the radical democratic embers of the original position in civic life.”

⁶³ Rawls first made the distinction between a thick and a thin veil of ignorance in his article ‘Kantian Constructivism in Moral Theory’ (1980, 549).

(Habermas 1998, 67–70). For Rawls, the four-stage sequence is precisely that, the procedure citizens can use to develop justifications for or critiques of political and social policies that can be publicly justified to all liberal democratic citizens. This is possible as the four-stage procedure is modelled on the impartiality requirement, meaning that the reasoner must develop a freestanding justification that does not rely on their own comprehensive moral values or contingent facts to promote their own benefit. Now I return to the discussion of the initial agreement and how consensus is achieved at this level in terms of the impartiality requirement.

For ‘artificial agents’ to arrive at a consensus in the initial agreement, this consensus must be reached without the agents invoking any moral truth claims of a specific comprehensive moral doctrine, and instead find agreement on purely political values. This is achieved via the method of reflective equilibrium, which acts as a method of deliberation through which to align citizens’ intuitive moral ideals with what they would regard as reasonable principles of justice (Rawls 1999a, 18).⁶⁴ In other words, principles of justice could never be publicly justifiable to citizens of a constitutional democracy if these principles are not compatible with what citizens take to be reasonably acceptable moral values to hold.⁶⁵

The method for testing how the conjectured theory of justice aligns with a person’s moral sensibility and their considered judgements of justice is wide, as opposed to narrow,⁶⁶ reflective equilibrium (Rawls 2001, 31). Wide reflective equilibrium is the method that accounts for the artificial agents’ continual reflection and revising of their considered judgements of judgements and their moral sentiments. This revising is done with the aim to bring alignment to citizens’ general moral convictions, judgements of justice, and the proposed theory of justice and its first principles (ibid.). It is at the point of wide reflective equilibrium that the agents arrive at considered judgments of justice that need no further revising, as consensus would have been reached. It is in this state of wide reflective

For a detailed discussion of reflective equilibrium as a method of justification, see: Daniels, N, 1996. *Justice and Justification*, Cambridge: Cambridge University Press.

⁶⁵ Rawls traces ‘reflective equilibrium’ to Goodman’s method of justification for inductive and deductive arguments; see: Goodman, N. 1955. *Fact, Fiction, and Forecast*. Cambridge, Massachusetts: Harvard University Press.

⁶⁶ As opposed to wide reflective equilibrium, narrow reflective equilibrium is a weaker form of reflection, since a reasoner does account for the moral force of alternative conceptions of justice during the process of rational deliberation (Rawls 2001, 31).

equilibrium that both the generally held common moral virtues and the proposed theory of justice which best manifests these moral virtues become evident (Benton 2018, 46).

Citizens need to be able to agree on the constitutional essentials; it is necessary that they are able to justify to others what they believe are reasonable and rational principles that they and their fellow citizens should support. Therefore, Rawls argues that public justification, and not agreement alone, is necessary for choosing a conception of justice (*ibid.*, 27). The ground for public justification is the outcome of the process of reflective equilibrium because citizens can agree on a conception of justice that all agents can publicly support. Reflective equilibrium, as mentioned above, enables consistency between citizens' considered judgments of justice, moral sentiments, and the principles of justice (Benton 2018, 46–48).

The fixed point of the agents' 'considered judgments' is freedom of conscience (Rawls 1999a, 181, 187). This is the fixed point as all agents recognise themselves and others, broadly speaking, as having the freedom to choose how to give their life meaning, which ties into the fact that they recognise that their society is characterised by reasonable moral pluralism. Freedom of conscience exemplifies the core assumption of a modern democratic society, namely that of moral pluralism. In this way, liberty of conscience is the underlying moral sentiment that all persons intuitively relate to, regardless of their comprehensive doctrines of the good. Freedom of conscience as the point of convergence implies that this is the moral value that all citizens view themselves and others as being able to endorse as a constitutional essential, despite their disagreements on other moral truth claims (*ibid.*, 181).

Identifying freedom of conscience as the moral value that all persons would find reasonable, is the best possible hope for citizens of a liberal constitutional democracy as, according to Rawls, the identification of moral truth is not appropriate for a society characterised by moral pluralism (Rawls 2005, 125–129). Rawls regards moral pluralism as a natural feature of a liberal society. Moral pluralism will forever be present for Rawls since reasonable disagreement cannot be eradicated. Thus, moral pluralism is an inherent aspect of liberal society. Rawls introduces the concept of the burdens of judgment to account for reasonable disagreement as a permanent feature of political liberalism. I discuss the burdens of judgments as an aspect of the reasonable in the following section. For now, it is important to note that the idea of moral truth as being a basis for justification of a political theory of justice itself would undermine the freedom of society, and the burdens of judgment. We will

return to the discussion of the importance of reducing reasonable disagreement at the end of Section 2.2 of this chapter.

To recap the significance of reflective equilibrium, it is clear that Rawls demonstrates how agents are able to agree on one general moral value without appealing to a comprehensive value system or theory of the good, when there seems to be no possibility for agents to agree on any moral truth claim, due to reasonable moral pluralism. The importance of reasonable moral pluralism and developing a purely political theory of justice will be discussed in Section 2.3 of this Chapter. Let us now turn to the conception of the person to understand how the conditions of the initial agreement as a reasonable and rational agreement mirror the construction of the citizens' moral powers.

III Conception of the person

Rawls constructs the conditions of the initial agreement to represent the freedom and equality of persons. This brings us to a foundational and third presupposition Rawls makes: viewing a just society as one that is comprised of individuals who are considered free, equal, rational, and reasonable (ibid., 48–54). For Rawls, the description of persons as reasonable and rational refers to their ability for a sense of justice (in the case of the former) and a sense of the good (in the case of the latter). These two features Rawls terms to be moral powers. This binary distinction of a citizen's personality mirrors the binary societal distinction between the public (the political) and the non-public sphere (the moral) and the distinction between the right and the good. The sense of justice is the kind of reasoning needed in the public sphere of society in order to develop the content of the right and ensure reasonable deliberation on issues of justice. In comparison, the sense of the good of citizens is exercised in the non-public sphere when deciding on one's version of the good and how it can be realised in terms of one's rational plans of life, moral values, and aspects of associational life to name a few. The public and non-public distinction will be discussed later in this chapter; for now, let us turn to the moral powers of the sense of justice and the sense of the good and the respective capacities for reason, namely, the reasonable for the former and the rational for the latter.

Firstly, a sense of justice⁶⁷ is the capacity citizens have that enables them to develop, uphold, and carry out a conception of justice (Rawls 1963, 282). Since citizens want to develop a society in which all people can fairly benefit from the cooperation of others, their motivation for exercising their sense of justice is characterised by the idea of reciprocity (Rawls 2005, 51). The notion of reciprocity accounts for citizens' ability to reason (about the principles of justice) from both a position of impartiality and one of mutual advantage. 'Artificial agents' are represented as impartial, inasmuch as they are mutually disinterested, being that they reason with the general good of society in mind and not their individual comprehensive doctrines of the good. The constraints of the original position (i.e., the veil of ignorance) ensure that the initial agreement is to the mutual advantage of all citizens; in this way, artificial agents mimic citizens' capabilities to ensure that the principles of justice would secure all citizens the best possible opportunities to achieve their own ends (the idea of mutual advantage) (ibid.). The public/political identity of citizens is tied to their ability to exercise their capacity for a sense of justice (ibid., 213).

The sense of justice is the capacity that enables citizens to be reasonable. By 'reasonable', Rawls means that this is a feature of citizens that accounts for their ability to be able to propose fair standards for cooperation in society; by fair, is the understanding that the standards and their justification must be open to all citizens to be able to support (ibid., 48–50). Reasonability is tied to the feature of reciprocity. The ideal of reciprocity is the motivation that accounts for citizens wanting to develop and adhere to fair principles and policies to govern society (ibid.). This motivation is a combination of altruism and egoism, whereby citizens are motivated to participate in a just society for the mutual benefit of themselves and their fellow citizens (ibid.). This is why Rawls regards the principles of justice as being principles of reciprocity since they are for the mutual benefit of all citizens, yet require mutual cooperation of all citizens to acknowledge and uphold the demands of justice. In contrast to reasonable persons, unreasonable persons then are those that are willing to disregard the fair terms of cooperation if it will lead to their self-benefit even if it is not to the benefit of others (ibid.). I expand on the discussion of unreasonable persons in the following subsection, the focus here is on explaining the features of the reasonable. The

⁶⁷ For discussion on the role of the sense of justice and its role for a stable society, see: Mandle, J. 2022. 'Sense of Justice' in Luppi (eds) *John Rawls and the Common Good*, Routledge: New York.

ability and motivation for fair cooperation is one feature of the reasonable aspect of the person, the second is the acknowledgement of the burdens of judgement.

As stated earlier, moral pluralism is a feature of liberal democratic society; with that, Rawls states liberal society is marked by disagreement. Rawls defines the conditions for reasonable disagreement when it comes to questions of justice. The burdens of judgement are the foundation of reasonable disagreements. According to Rawls, persons “share a common human reason, similar powers of thought and judgment: they can draw inferences, weigh evidence, and balance competing considerations” (ibid., 55). When exercising their reasonable judgement, persons must take into account that reasonable disagreement can be a result of analysing evidence, the interpretation of moral and political concepts and values, a person’s lived experience, the appeals to various frameworks for assessment, and, lastly, the difficulty in prioritising some values at the expense of others (ibid., 56–57). These are the six sources of reasonable disagreement. While “prejudice and bias, self- and group interest, blindness and wilfulness” are the six sources of unreasonable disagreement (ibid., 58). I return to the discussion of unreasonable disagreement and unreasonable comprehensive doctrine in the following section; for now, I must contrast the reasonable against the rational.

In contrast to the sense of justice, the other capacity Rawlsian citizens have is for a sense of the good, a feature of the rational aspect of the person. This capacity accounts for a person’s ability to choose and advance a conception of the good⁶⁸ (Rawls 2001, 19). Due to this faculty, citizens are seen to be the sole legitimising force for their moral doctrines and, thus, their conception of the good then is not a result of an external source such as an authority figure. Rather all persons’ conceptions of the good are chosen, revised, and advanced due to their own inclinations (ibid., 22). The moral identity of Rawlsian citizens depends on the social circumstances in which citizens find themselves, their individual desires and preferences, feelings of loyalty, devotion, duties, and obligations to persons, and to the associations to which they choose to belong (Rawls 1985, 233). Since the moral identity of persons is developed and expressed via a person’s rational plan of life, the rational feature of

⁶⁸ A reminder, a conception of the good, as stated, is a general term Rawls uses to refer to the values a person or community views as the highest value of human life. For example, any community or person that subscribes to a specific philosophical, metaphysical or religious doctrine, subscribes to that community’s or institution’s conception of the good, as they adopt a set of values embedded in a belief system (Rawls 1987, 9, Benton 2018, 10).

the person is characterised by self-interest. By self-interest I mean that persons may be motivated to hold certain moral values or roles in associational life for their own desires or be moved to hold these roles by the desires of other people in their life.

The reasonable and the rational as forms of reasoning hold different functions. Reasoning about principles of justice, as discussed previously, requires that citizens reason from a detached position, one in which they objectively evaluate the content and implications of the initial agreement. This objective requirement is not tied to the moral capacities of citizens in forming their moral identity since seeing that, as stated above, it is essential to reason with their relative circumstances in mind (Rawls 2005, 50-51). Relative circumstances are the individual life choices each citizen makes. It is these choices that are dependent on their context. Citizens exercise this form of reasoning in their private lives, i.e., in the non-public sphere of society (ibid., 220). In other words, exercising one's sense of the good is confined to the domain of the background culture in justice as fairness in so much as citizens choose which voluntary associations to belong to in society, while the capacity for a sense of justice is relied on in constructing laws and regulations for the basic structure of society. Thus, when Rawls refers to citizens as being rational, he is referring to the above features associated with the sense of the good (Rawls 2001, 21–22).

Since persons can reason, revise, and carry out both their conception of the good and their conception of the right, they are seen to be free. Their freedom rests on the fact that persons view themselves as the “self-authenticating sources of valid claims” (ibid., 23). Rawls maintains that citizens are considered equal because, all persons, regardless of their position in society, possess the same moral powers, to a greater or lesser extent, and these are the sufficient characteristics for persons to be viewed as equal (Rawls 2005, 34).⁶⁹

The view of the person described above is a political conception and does not, according to Rawls, rely on a metaphysical conception of the person or a comprehensive account of the

⁶⁹ Rawls's argument that all persons share (to a greater or lesser extent) the same equal capacities is illustrated by his discussion of the range property in Section 77 of *A Theory of Justice* (1999, 444). Basing personhood on capacities alone, results in the lack of inclusion for people with disabilities. For an analysis of how Rawlsian theory and social contract theory cannot account for the distribution of the same rights and entitlements to disabled individuals, see: Nussbaum, M. C. 2006. *Frontiers of Justice: Disability, Nationality, Species Membership*. Cambridge, Massachusetts: Belknap Press of Harvard University Press.

good.⁷⁰ Rawls considers his view of the person wide-ranging enough that persons holding competing conceptions of the good and diverse metaphysical or philosophical views would still be able to uphold this political conception of the person and their own comprehensive conceptions of the person without them being in conflict. For example, a religious organisation may require certain virtues, such as chastity and self-control to be upheld by its members for them to be regarded as good persons. Rawls's political conception of the person would not conflict with metaphysical views of the persons described above for two reasons.

Firstly, virtues such as chastity and self-control do not conflict with the political values such as freedom and equality. In this way, Rawls would suggest that this organisation's metaphysical view of the person and justice as fairness's political conception of the person can be congruent, owing to the fact that the comprehensive metaphysical view of the person will be confined to the non-public sphere of an individual's life, while the political conception of the person will be able to overlap with various competing conceptions of the person. Secondly, comprehensive moral doctrines promote alternative ideas of personhood. For instance, a Christian organisation states that human beings are created in God's image, a basis for their comprehensive conception of the person. Other moral doctrines develop their own conception of the person that may not align with the Christian view of personhood. Thus, the political conception has to be general enough to be compatible with diverse views of personhood.

By this, I do not mean to suggest that all comprehensive conceptions of the person would be acceptable, since the political conception of the person cannot overlap with every possible metaphysical or philosophical conception of the person. For instance, if there was an organisation whose conception of the person did not give all groups the same personhood/dignity then this would be unacceptable, this justification is expanded in Chapter 3. The reason for being unacceptable is that this view of the person would not be aligned with the latent democratic ideal that the Rawlsian conception of the person upholds (ibid., 175). We will return to this discussion when we discuss reasonable and unreasonable comprehensive doctrines, later in this chapter, as the same issues arise, viz. the good must be

⁷⁰ Many theorists have critiqued the Rawlsian self, one of the strongest critiques against the liberal conception of the person was levelled by Michael Sandel, this will be discussed in Chapter 4. Refer to the following for further discussion: Sandel, M. 1984. 'The Procedural Republic and the Unencumbered Self'. *Political Theory*, 12, 1, pp. 81–96.

bound by the right. This is not to suggest that Rawls's political conception does not rely on a moral view of the person. Just like the argument for the original position, there are substantive moral values embodied in the process of constructing the conception of the person, but the claims are general enough to overlap with competing metaphysical views of the person that citizens can subscribe to. These substantive claims extended to Rawls's psychological principles of the moral development of persons, which I discuss in Section 2.3 of this chapter.

To conclude this section, the Rawlsian conception of the person is characterised in a binary manner between the distinction, on the one hand, the sense of justice and the reasonable and, on the other hand, the sense of the good and the rational. The reasonable is exercised when deliberating about questions of justice. Thus, Rawls regards the reasonable as a feature of public reason as it is a form of reasoning needed to reach fair standards of agreement among free and equal citizens. In contrast, the rational is private in a way that the reasonable is not. By 'private', I mean that the rational is a form of reasoning that accounts for how individuals choose to structure the personal aspects of their lives. However, the moral powers must be integrated, so that the reasonable and the rational forms of reasoning align with one another. If not, this will result in a split moral personality of citizens, as I show in this thesis. Next, I unpack how reasonable is a demarcator for the acceptable kinds of comprehensive doctrines.

IV The fact of reasonable pluralism

It is essential for Rawls to develop a political conception of the person to be able to be upheld by persons with competing metaphysical views since one of the core features of a democratic society is recognising a person's liberty of conscience, as mentioned previously. Bearing in mind that persons can choose their own rational plans of life, the fourth presupposition Rawls makes is that a just and fair society is one that is not only characterised by reasonable moral pluralism but helps to foster the pluralism of reasonable comprehensive doctrines (Rawls 2001, 9–10).

Due to this, Rawls acknowledges from the outset that the basic structure of justice as fairness cannot promote or represent the moral ideals of one comprehensive doctrine. Instead, agreement regarding the regulation of the basic structure must be reached independently of any one comprehensive doctrine of the good. In this way, Rawls notes that citizens of justice as fairness do not form part of a shared community founded on one comprehensive

doctrine.⁷¹ In fact, Rawls suggests that such a community would be considered unjust as it would have to disregard citizens' basic rights to impose such views, as seen in the following extract: "... Since the Reformation, we must recognise that, just as on questions of religious and moral doctrine, public agreement on the basic questions of philosophy cannot be obtained without the state's infringement of basic liberties" (Rawls 1985, 230).

A current feature of liberal democracies is the partially incompatible comprehensive doctrines citizens may share, whether these doctrines are based on religious, metaphysical, or philosophical foundations; a natural feature of liberal democracies is that citizens hold competing ideas of the good (Rawls 2001, 3). This feature is a natural feature of society insofar as it is reinforced in citizens' rights such as liberty of conscience, which Rawls traces back to the religious wars (Rawls 2005, xx–xxi). Given this, Rawls considers reasonable pluralism as one of the central historical circumstances of political liberal societies and, hence, regards it as a "fact of reasonable pluralism" (Rawls 1988, 267). Therefore, any theory of justice for a liberal society would have to take this fact into account. Considering that citizens hold diverse and conflicting ideas of the good, a central feature of justice as fairness is reasonable disagreement. Rawls refers to this as the burdens of judgment, as discussed earlier.⁷² This notion encapsulates both the difficulty and possibility of reaching an agreement on political judgments given reasonable pluralism as an ever-present condition of liberal constitutional democracies.

Understanding the importance of reasonable pluralism, the burdens of judgment, and liberty of conscience, Rawls is aware that the requirements of justice needed to regulate the basic structure must regulate it in such a way that there is impartial treatment of comprehensive doctrines (Rawls 2005, xxci–xxvii). By impartiality, Rawls does not claim that the requirements of justice will be broad enough to include every possible comprehensive doctrine. Rather, by impartiality, to reiterate, he means that in constructing the principles of justice as fairness, the basic structure should neither promote or depend on a comprehensive

⁷¹ The degree to which Rawls develops a 'moral' community will be shown in the following chapters. In Chapter 4, I address one of the strongest critiques levelled against Rawls's theory and its lack of moral community by Alasdair MacIntyre. See: MacIntyre, 2007. *After Virtue*, 3rd Edition. Notre Dame, Indiana: University of Notre Dame Press.

⁷² See Section 2 of Lecture II pp. 54–58 in *Political Liberalism* (2005) for a detailed discussion of the sources of the burdens of judgement.

doctrine of the good (ibid., xxxii). This is what Rawls aims for when he suggests that he develops a theory of justice as a purely political liberalism as opposed to a comprehensive liberalism.⁷³ The foundation of public agreement is derived from what citizens would deem morally reasonable to follow given the circumstances of justice, described above. Hence there is no public agreement as to what is morally true. This is why, as stated in the introduction, Rawls substitutes the search for moral truth with the search of what is morally reasonable (ibid., 129). The question of truth is an appeal to a comprehensive doctrine, while the question of reasonability is an appeal to values and principles that liberal persons can consider as reasonable to the degree that these values and principles enable fair cooperation and mutual benefit for all.

Considering that Rawls does not prescribe any moral truth claim, he turns to “latent public ideals in political culture of a democratic society for its justification” (ibid., 175). The ‘its’ in the previous sentence refers to the standards, values, and principles of justice. It is these latent public ideals embedded in the justification of the content of the principles of justice that act as the legitimising condition for any reasonable comprehensive moral doctrine. It is through exercising one’s capacity for a sense of justice and reasonable judgement that Rawlsian citizens can agree on the political virtues that are fair, since they support mutual cooperation and can be aligned with any reasonable comprehensive doctrine. Societal ideals such as fair social cooperation, liberty of conscience, civility, tolerance, reasonableness, sense of fairness, solidarity, and equality, to name a few, act as overarching political virtues that need to be categorically upheld and cultivated by all Rawlsian citizens (ibid., 5–7). It is these political values that become the shared public basis for stability in justice as fairness. To clarify this, let us turn to a discussion of how a constitutional consensus leads to an overlapping consensus.

2.3 The constraint of justice

I Stability of justice as fairness

In order for an overlapping consensus to be possible, a constitutional consensus must first be achieved. A constitutional consensus is a consensus on the political values and procedures of

⁷³ Political liberalism is not a comprehensive liberalism it does not try answer the three questions on page xxvi of *Political Liberalism* (2005).

a liberal constitutional democratic government (ibid.,159). The focus of a constitutional consensus is on developing an agreement on the following aspects: one, which rights and liberties are given priority to the degree that they require constitutional protection; two, developing agreement on voting and legislative aspects of government; three defining the limits of rights and liberties of individuals (ibid.). Over time, a constitutional consensus can become to be seen as the most reasonable framework we have, given liberty of conscience. Thus, in the long run, the constitutional consensus may gain support not as a *modus vivendi* but as the most decent, fair framework for mutual cooperation given reasonable pluralism.

Rawls gives three requirements for a stable constitutional consensus. The first requirement is ensuring that political institutions secure the liberties and rights of all citizens. Secondly, the application of liberal principles must be done via the exercise of public reason to ensure that the application of principles is in line with the sources of the burdens of judgement (i.e., the standards of assessment of reasonable proposals). Lastly, the justification given for the application of principles must not be controversial but rather be regarded as common sense (ibid., 161–162).

“Whether the third requirement of stable constitutional consensus is met by liberal principles depends on the success of the preceding two. The basic political institutions incorporating these principles and the form of public reason shown in applying them—when working effectively and successfully for a sustained period of time (as I am here assuming)—tend to encourage the cooperative virtues of political life; the virtue of reasonableness and a sense of fairness, a spirit of compromise and a readiness to meet others halfway, all of which are connected with the willingness to cooperate with others on political terms that everyone can publicly accept” (ibid., 163).

This extract highlights the constraint of the right on the good at the constitutional consensus stage. When citizens agree on the liberties and their application at this stage, they agree to be willing to alter their comprehensive doctrines accordingly so that their good can align with the demands of justice. Due to this, the constitutional consensus secures one aspect of stability in that it enables a shift from pluralism to reasonable pluralism (ibid.).

A constitutional consensus becomes an overlapping consensus when a number of factors are met. Firstly, when citizens are able to develop a political conception of justice. This requires

citizens to exercise their reasonable judgement to construct justifications for political and social policies that persons from opposing comprehensive doctrines could support. Rawls regards this factor as increasing the depth of the commitment to justice. Secondly, the breadth of justice must be extended. The constitutional consensus must be extended to ensure legislation and social policies protect the education and the social and economic well-being of citizens as free and equal persons (ibid., 166–167). The specificity of the consensus is important for Rawls, consensus must be extended to an agreement on the kinds of views that are acceptable. These are views that align with the political values and culture of liberal constitutional democracies, namely the person as free and equal and society as a fair standard of mutual cooperation (ibid.). Lastly, Rawls states that if a narrower consensus can be achieved between the persons who hold different liberal conceptions of justice informed by their socio-economic interests, then the possibility of achieving an overlapping consensus becomes possible (ibid.). Now that I have addressed the conditions for an overlapping consensus, I now turn to the discussion of the concept of the overlapping consensus.

Rawls introduces the notion of an overlapping consensus to illustrate the possibility that a society marked by moral pluralism not only can have, but needs to have, agreement regarding certain fundamental principles, ideals, and moral values to develop a stable conception of justice (Rawls 1987, 1). As discussed earlier an essential feature of political society, for Rawls, is accounting for moral pluralism. In *Political Liberalism* (2005, 190–197) Rawls narrows the condition that determines what kinds of comprehensive conceptions of the good can coexist. The condition he gives is reasonability. Rawls states that reasonable, comprehensive moral doctrines conform to the standards of justice. As mentioned in the previous section, is it essential that the two capacities of persons, namely the sense of justice and the sense of the good, must cohere. This coherence is possible and realised when the constraint of the right applies to the possible comprehensive moral doctrines. Those doctrines that do not conform to the boundaries of justice are considered unreasonable moral doctrines. They are unreasonable as these doctrines cannot internalise the requirements of justice (ibid., 174). For instance, an organisation that wishes to perform child sacrifice is an unreasonable doctrine since its justification of killing children conflicts with the values of justice such as basic human rights. The boundary of the right is the foundational constraint that separates the acceptable moral doctrines and associational forms of life from those that are not. This is seen in the following requirement Rawls makes: “Should an incompatibility later be recognised

between the principles of justice and their wider doctrines, then they might very well adjust or revise these doctrines rather than reject those principles” (ibid., 160).

Thus, the condition of reasonability demarcates acceptable comprehensive moral doctrines that can exist in a Rawlsian society. The fact that all citizens can agree to affirm the same moral values (mentioned previously) underlying the principles of justice, means that this agreement acts as a moral stabilising feature in a constitutional democracy. This enables the possibility for a cooperative well-ordered society that fosters reasonable comprehensive doctrines of all its citizens without prescribing to them an ultimate moral system. Due to this, the principles of justice can be affirmed by multiple comprehensive doctrines since the conditions of justification and the political virtues are not based on a moral truth claim of any comprehensive doctrine of the good. A core feature of stability for Rawls is founded on a shared set of values of justice that all citizens can and wish to reaffirm and not a consensus originated on a *modus vivendi*.

Stability in terms of a *modus vivendi* creates stability in the wrong way for Rawls. Different comprehensive doctrines choose to coexist with one another by honouring the terms of societal agreement to ensure civil peace. This civil peace rests on instability insofar as if the power structure between the competing comprehensive doctrines were to change (due to members increasing/decreasing), it leaves the state vulnerable to one comprehensive doctrine to take over and enforce its values (ibid., 140–141).

Instead, stability needs to be created in such a manner that the supporters of the reasonable comprehensive doctrines who have chosen to uphold democratic political values⁷⁴ ensure they all choose to uphold the political values to secure these values because they are worthy values to protect in and of themselves. Rawls does not want the political values to gain support from citizens for only instrumental purposes, for example as a safeguard against civil unrest (ibid., 459). Thus, a key feature of developing a social union or creating a stable society in the correct way is for citizens to recognise that they have an obligation to ensure that they do not try to promote their doctrine of the good to a hegemonic position to alter the constitutional laws (ibid., 460).

⁷⁴ Political values such as liberty of conscience, freedom of association, and equality of persons.

The political values then become the point of reasonable congruence of all comprehensive doctrines as they are representative of that which all persons, irrespective of their comprehensive doctrines of the good, find reasonable. It is the principles of justice and the political values that citizens find reasonable that demarcate the reasonable comprehensive ideas of the good from the unreasonable. Since persons accept these values as reasonable, they must also implement them not only in the public sphere but also in the private sphere. Thus, the constraint of the right results in reasonable comprehensive doctrines as opposed to any comprehensive doctrines being included. Thus, reasonable denotes the political restriction for ideas of the good. It is a necessary restriction that safeguards the liberty, equality of persons, and fair standards for cooperation in justice as fairness.

Insofar as citizens can agree to uphold the political values and principles embedded in the justification of the principles of justice, the content of the right acts as a stabilizing force, inasmuch as citizens incorporate these values into their comprehensive doctrines. In this way, stability is developed as individuals reaffirm their loyalty to basic institutions, the political principles of justice, and the moral values underlying these principles. In this way, the ‘overlapping consensus’ is developed as a result of comprehensive moral doctrines having to align with the requirements of justice.⁷⁵

It is this requirement of conformity to the standards of justice that enables the justification of certain ways of life, while excluding other ways of life in the background culture that do not conform to the political values (ibid., 174). This conformity is a demand as it ensures that the political values and principles are acknowledged by citizens as reasonable values and principles that help realise a fair cooperative society. For justice in the background culture, the constraint of the right is a demand as it requires that liberty and equality of citizens be secured in both spheres to ensure that justice as fairness leads to a fair and equal society for mutual cooperation. I return to this discussion in the following subsection regarding the public and non-public spheres. Here it is pertinent to acknowledge the constraint of the right on the good in terms of the kinds of comprehensive doctrines that are acceptable.

Due to the demands of justice, citizens have no ability to publicly justify their pursuit of comprehensive doctrines that cannot conform to the boundaries of justice (ibid.) Given this,

⁷⁵ In Chapter 4, in the discussion of the instability of liberal democracies, I will touch on the disintegration of societies overlapping consensus.

Rawls does not claim that justice as fairness allows or encourages all comprehensive moral doctrines equally. Rawls specifically claims that certain ideas of the good will flourish under justice as fairness, while others will not. This is evident in Rawls's statement in 'Fairness to Goodness':

"We should not speak of fairness to conceptions of the good, but of fairness to moral persons with a capacity for adopting these conceptions and caring about the conditions under which they are formed. Fairness to persons may be achieved by a well-ordered society even though all conceptions of the good do not flourish equally and some hardly at all. This is because it is fairness to persons that is primary and not fairness to conceptions of the good as such" (Rawls 1975, 554).

Rawls makes the distinction between fairness to persons versus fairness to comprehensive doctrines, with the aim to show that priority should be the treatment of persons and not the fact that many comprehensive doctrines can be included within a political conception of justice (ibid., 210–211). Rawls, in *Political Liberalism* (2005, 196), gives two reasons as to why justice as fairness would "discourage certain conceptions of the good" (ibid.). The first is that some comprehensive doctrines could directly conflict with the principles of justice (see the example of child sacrifice given earlier). Generally speaking, any example where a comprehensive doctrine relies on a normative foundation that is grounded on the subjugation of persons based on race or gender will be discouraged, due to the fact that these doctrines undermine the freedom, equality and equal opportunity of persons. In other words, comprehensive moral doctrines that do not ensure "its members' equal basic liberties and adhere to mutual toleration" cannot be preserved (ibid., 198). In Chapter 3 I interrogate this idea of comprehensive doctrines promoting illiberal metaphysical or religious views.

Secondly, there are two reasons Rawls gives as to why some comprehensive conceptions of the good may not gain support from citizens (ibid.). Some doctrines may not manage to attract more followers. Thus, they may continue to have a disproportionately small portion of support compared to the support given for other doctrines, while other comprehensive doctrines that wish to acquire control of the basic structure of society will not be able to endure. Doctrines such as these would need to relinquish the desire for, and hence reformulate their doctrine independently of, their need to control the basic structure of society (ibid., 196). Those that cannot be preserved are considered unreasonable moral doctrines and unworthy forms of the good. Thus, these two reasons Rawls gives indicate the necessity for

comprehensive moral doctrines to be aligned with the principles of justice and the underlying moral values of justification.

Rawls, throughout many of his works, in reference to comprehensive doctrines conforming to the requirements of justice states: “The right draws the limit and the good shows the point” (Rawls 1988, 251). This implies that the right establishes the just public conditions in which one can then in the non-public sphere deliberate and decide on one’s own version of the good insofar as this good is compatible with the commonly held conception of the right that is agreed to by all in the public sphere (Rawls 2005, 394).

Aligning comprehensive doctrines with the conditions of justice does not, as Rawls claims, result in justice as fairness being a fully comprehensive theory of justice. A fully comprehensive theory of justice must prescribe both political and non-political values that stipulate what is of value to human life (ibid., 175). Considering that the requirements of justice do not prescribe “ideals of personal character” or “conceptions of what is of value to human life” in the non-political sphere of citizens’ lives, then justice as fairness is a political theory of justice (ibid.). To repeat, the political values do not dictate comprehensive moral truth claims to citizens, as such this enables justice as fairness to impartially regulate the coexistence of reasonable comprehensive moral doctrines (ibid., 13).

The separation of political principles of justice (that embody latent moral sentiments of democratic society) and fully comprehensive moral conceptions of the good is facilitated by the split Rawls develops between public and non-public reason. Rawls develops the divide between public and non-public reason to separate the kinds of reasoning that is appropriate in public political discourse. This split confines the citizens’ desire for their search for moral truth or what Rawls terms the whole truth to the non-public sphere in society (ibid., 394-395). Let us now turn to this public and non-public divide for an in-depth exposition.

II Public versus non-public reason

Rawls retained his distinction between public versus non-public reason throughout his major works such as *A Theory of Justice* (1999), *Political Liberalism* (2005), and *Justice as Fairness: A Restatement* (2001). However, in the revision of *Political Liberalism*, especially

the addition of part four, ‘The Idea of Public Reason Revisited’⁷⁶ and *Justice as Fairness: A Restatement*, he qualifies the relation between these spheres. Allow me first to address the contrasting nature in which Rawls describes both the public and non-public spheres and the respective kinds of reasoning citizens can employ in each one, then I will address the congruent nature of the spheres.

The public sphere, on the one hand, is the sphere of reasonability; this sphere is regulated by purely political ideas of the good⁷⁷ since the subject of this sphere is the basic structure of society. On the other hand, the non-public sphere is the sphere of rationality; this sphere creates space for citizens to rely on their conception of the good to give meaning to their lives. In this way, the search for moral truth is confined to the non-public sphere, while the search for reasonable moral agreement is confined to the public sphere.

It is imperative that in the public sphere policies are justified only by an appeal to the content of the right, i.e., the values of justice. This is essential for engagement in the public sphere, as it is characterised by non-voluntary organisations since citizens are born into and formed within society and do not have the ability to voluntarily remove themselves from this sphere. Thus, the arguments made in this sphere must be able to be considered reasonable to all citizens regardless of their conceptions of the good. Professional groups, religious or secular institutions, academic societies, and primary, secondary, and tertiary learning institutions form part of the non-public sphere (ibid., 443). The non-public sphere is responsible for developing the ‘background culture of society’, as stated in Section 2.2 of this Chapter.

In contrast, the non-public sphere is characterised by voluntary associations (such as those previously mentioned). These associations are considered voluntary insofar as citizens are free to choose and to reject any organisation, religious movement, or group they align with, or disagree with. A feature of the non-public sphere is that it can accommodate a plurality of comprehensive doctrines given that there are multiple different reasons citizens can appeal to for their rational life plans. The various moral, philosophical, secular, religious, or

⁷⁶ This section was first published as an article; see: Rawls, J. 1997. ‘The Idea of Public Reason Revisited’, *University of Chicago Law Review*, 64, pp. 765-807.

⁷⁷ As discussed earlier political values are moral values of modern constitutional liberal democracies, these include values such as fair social cooperation, liberty of conscience, civility, tolerance, reasonableness, sense of fairness, solidarity, and equality. act as overarching political virtues that need to be categorically upheld and cultivated by all Rawlsian citizens (Rawls 2005, 194).

metaphysical organisations to which citizens belong and the variety of values that they endorse signify this moral pluralism. Here organisations can uphold multiple comprehensive and conflicting moral truth claims as this sphere of society is voluntary, so citizens can freely leave an organisation anytime their views no longer align with the moral values of the organisation itself.

The construction of the basic structure of society (i.e., the subject of justice), and the content of justice (i.e., the principles of justice) form what Rawls calls ‘the special subject of justice’ and, as such, citizens do not use their public reason to decide on the fundamental content of justice, rather, as mentioned earlier, this is determined by the constraints of the initial agreement. Public reason can and should be evoked by citizens when deciding on tax and environmental legislation, land zoning issues, and the allocation and distribution of goods (ibid., 214). Public reason is singular in nature, in that there is one set of political values and principles for citizens to appeal to, hence it being a unifying factor for a democratic society (ibid., 220). This idea of public reason as a unifying factor is discussed in Section 4.7 of Chapter 4. In contrast, non-public reason is informed by one’s appeal to their moral values and comprehensive doctrines. Each comprehensive doctrine offers a different non-public justification for adherence to the requirements of justice. Due to this, there is a plurality of rational justifications for adherence to different moral values and plans of life. In comparison, there is one standard for a reasonable justification for questions of justice. Let us look at an example to illustrate this distinction more clearly.

A group of citizens wish to enact policy change on climate issues. Any change they wish to make to legislation would require these citizens to engage in public reason when discussing political issues that arise in their society. In doing so they could appeal to any democratic political values to illustrate their point. What they cannot appeal to is an argument based on a comprehensive moral doctrine. Since not all citizens share the same comprehensive doctrines not all would find an argument made on that basis reasonable. In contrast to this, say a citizen wishes to express her view on climate change in the space of her scientific association, she could make an appeal to her comprehensive doctrine, given the sphere in which she presents her argument would find it reasonable, considering that all persons in this association hold the same comprehensive views. Insofar as she shares her views with like-minded members of her associations, she is employing her use of non-public reason.

Allow another example to illustrate this idea. If a leader of a religious organisation were to request an allocation of state funds for providing her organisation's members with weekly free food parcels, the justification for these food parcels must be explained and justified in line with the requirements of justice. Due to this, the leader could construct an argument justifying how providing free weekly food parcels would help provide the essential goods its members would need. In her justification, she could make an appeal to one of the primary goods such as ensuring basic rights and liberties or protecting and helping foster citizen's self-respect, or even justifying this distribution as part of the social minimum. The leader could not make the claim for food parcels by appealing to the ideals of their religious organisation as this line of reasoning is not congruent with the requirements of justice. Being that it relies on a comprehensive doctrine for its justification. If the state were to allocate the state funds for food parcels on those grounds, it would be seen to be promoting the ideals of the comprehensive doctrine itself, which undermines the foundation of justice as fairness. Rawls would suggest that this religious leader would need to find public reasons to justify her religious stance.

A case in point, Rawls illustrates the constraint of the right in his argument of the Good Samaritan. He states that religious doctrines can find public reasons, such as the difference principle for the public justification for comprehensive ideals, such as those held in the parable of the Good Samaritan (ibid., 465). Rawls states:

“... reasonable comprehensive doctrines, religious or non-religious, may be introduced in public political discussion at any time, provided that in due course proper political reasons—and not reasons given solely by comprehensive doctrines—are presented that are sufficient to support whatever the comprehensive doctrines introduced are said to support” (ibid., 462).

The example with the Good Samaritan is to illustrate how public reason⁷⁸ can incorporate political and comprehensive doctrines to support political values, and he sees this as a positive since it helps nurture, develop, and extend an overlapping consensus between comprehensive doctrines and political values. This example further highlights the congruence between the reasonable and rational judgement of the person. Individuals can reason about

⁷⁸ For a discussion on the use of public reason and abortion, see: Neal, P. 2014. 'Rawls, Abortion, and Public Reason', *Journal of Church and State*, 56, 2, pp. 323–346.

social and economic policies by using their sense of justice as reasonable judgement. The moral values that inform their reasonable judgement can be invoked so long as they can be formulated in such a way that they can be incorporated into a political conception of justice and not a moral conception. As stated earlier, this is one of the necessary conditions of the constraint of the right that enables an overlapping consensus to occur.

An essential aspect that ensures the stability of an overlapping consensus is for citizens to be able to develop and assert a reasonable justification for any position they wish to advance in the public sphere. This ability for reasonable justification is attributed to citizens' duty of civility. Citizens exercise their 'duty of civility' when appealing to public reason to justify policies, legislation, and distribution of goods. Rawls states clearly that a requirement for any democratic citizen is learning how to reason in such a manner that they can explain and justify their choice or action on public terms that other citizens could find reasonable to accept. These public terms are an appeal to liberty, equality and equal opportunity as the primary political values. When citizens exercise this duty, they are acknowledging to one another that there are limits to their comprehensive doctrines and a specific space they can occupy. Specifically, they acknowledge that it is unjust for them to try and control the mechanisms of the state to assert their comprehensive doctrine (ibid., 460). When citizens realise this and uphold their duty of civility, they help to safeguard the democratic institutions themselves. For example, the voting process would then be protected from citizens advancing their own preferences. Citizens would also protect themselves from an overthrow of majority rule, leading to a comprehensive doctrine as the foundation of state law (ibid., 219).

The culture of the public sphere and the culture of the non-public sphere are formed by what Rawls terms 'the non-public political culture' namely, "newspapers, reviews and magazines, television and radio, and much else" (ibid., 443). The non-public political culture would include organisations in civil society such as country clubs, recreational societies, and religious institutions, to name a few. Given the current technological advances in liberal democracies, we could extend 'the non-public political culture' to include social media platforms such as Twitter, Facebook, Instagram, YouTube, and TikTok. These digital platforms are used by citizens to express their comprehensive moral doctrines, moral values, and their association with private and public civil associations. On the one hand, these platforms can help to reinforce the democratic political values of society by creating congruence between liberal democratic values citizens' conceptions of the goods in both the

content and regulation of such technologies. On the other hand, these platforms can also be used to facilitate views that undermine political values, to the extent that they amplify pre-existing social and historical biases of democratic societies. In Chapter 4, I return to examples where the latter has occurred. These digital and AI technologies highlight the interconnection of public and ‘so-called’ non-public spheres in that they are public entities that facilitate the promotion and sharing of both political and private moral values.

Non-public and public reason are interconnected insofar as they help to protect and uphold different liberties in different areas of society. Public reason secures every citizen’s liberty of conscience as it protects citizens from being persecuted by organisations. For example, citizens that no longer wish to be members of a religious organisation can freely leave without fear of being labelled a heretic (ibid., 468). In contrast to this, non-public reason protects every citizen’s and organisation’s right of freedom of association. This enables citizens and organisations to carry out their rational life plans in line with their moral values. Thus, by Rawls insisting on citizens’ right to uphold and protect their freedom of association in the non-public sphere, he is ensuring that civil organisations are protected from state intervention (ibid., 221). In this way, citizens and their organisations have the freedom and security to express themselves how they see fit. Although Rawls acknowledges that individuals need protection from organisations and government, and organisations themselves need protection from the government, he does not unpack in detail how securing individuals’ and organisations’ liberty should be mediated by the state. Yet Rawls (2001, 163) does give a requirement for how this mediation should be navigated; he states that the first principle of justice⁷⁹ is to apply to all of society both the political (in a direct manner) and the social (in an indirect manner). Rawls illustrates this distinction in the discussion of the family as an institution, which we will unpack now.

One fundamental change later Rawls makes in his distinction of the public and non-spheres is showing the necessity for them to be seen as two unified spheres, both of which are the subject of justice. Rawls states: “If the so-called private sphere is alleged to be a space exempt from justice, then there is no such thing” (Rawls 2005, 471). Firstly, Rawls is not suggesting that the public sphere is devoid of all substantive values. He repeatedly states that

⁷⁹ As stated previously in this chapter, throughout this thesis when I discuss the application of the first principle of justice to the non-public sphere, it also entails the idea of equality of opportunity, insofar as the social minimum and an open society are necessary constitutional essentials.

the institutions in the public sphere require adherence to political values. Political values such as the promotion and protection of equality, liberty of conscience, and tolerance are some of the core values that form the political foundation of the public sphere. Although these political values are substantive they do not rely on any comprehensive conception of the good.⁸⁰ Thus, this enables these political values to be acceptable reasonable claims of justice.

Secondly, and more significantly, this above quote highlights that the public and private spheres have to cohere to the degree that justice is the subject of both spheres. This is essential for the coherence of the moral powers of persons. A person cannot have a split moral personality where they adhere to the political requirement of justice in the public domain, while holding contradicting moral values that undermine liberty, equality, and the conditions of a fair society. Rawls acknowledging that justice is the subject of both spheres, places emphasis on how and why the right and the good must merge. By merge, I mean to suggest that the rules of obligations (i.e., the principles of justice) must constrain the moral values and ways of life acceptable for citizens to hold. This restriction has been shown above in this chapter in terms of the constraint of reasonable persons and reasonable comprehensive doctrines. The implication of the quote (in the previous paragraph) is the necessity for adherence to political values in the most intimate aspects of a person's life to ensure the priority of the right. The family is one intimate institution that Rawls discusses how and why the principles of justice are to be prioritised here; this is the focus of the following section.

III The family

Susan Mollen Okin levelled one of the strongest feminist critiques⁸¹ against Rawls's theory of justice. In *Justice, Gender, and the Family* (1989), she highlighted the injustice of restricting the principles of justice to the basic structure or the public sphere of society. Okin emphasises that the private sphere is political or, as she states, "the personal is political" (ibid., 125). Okin argues that the non-public sphere of which the family is traditionally seen as part of, is formed by the political power relations of the state, since questions of labour in

⁸⁰ The degree to which Rawls develops a political or comprehensive political theory of justice has been debated extensively in literature in the 1990s; see: Nussbaum, M, C. 2011. 'Perfectionist Liberalism and Political Liberalism', *Philosophy & Public Affairs*, 39, 1, pp. 3–45, for recent scholarship on this discussion.

⁸¹ For a recent discussion of Rawlsian theory being (un)able to secure justice for women see: Edenberg, E. 2022. 'Gender Justice, Rawls, and the Common Good' in Luppi (eds) *John Rawls and the Common Good*, Routledge: New York.

the family are primarily political questions. For Okin, the family is an essential sphere of society where the constraint of justice should apply; this is necessary to secure the protection of women.⁸²

Okin's critique led Rawls to critically re-evaluate his relation of the family to the basic structure. As stated in the introduction, Rawls dedicated Section 50 of *Justice as Fairness: A Restatement* (2001, 162–168) to addressing Okin's concerns. Rawls states that all institutions that help nurture the reproduction of political values and principles in society over generations must form part of the basic structure of society (ibid., 162). The family is one of these institutions. More generally, Rawls claims that all “arrangements for rearing and educating children, and institutions of public health generally” form part of the basic structure to which principles of justice are to apply (Rawls 2005, 456–457). In the following chapter, I expand on this discussion of education and the impact of the moral development of individuals.

The crucial role of the family and educational institutions is that they are responsible for the production of current and future generations of citizens. After all, as stated in the previous section, there is no place exempt from justice. The principles of justice must then apply to the family for two reasons. One is that the institution of the family can be seen to be part of the basic structure of society as it has features of other non-voluntary political institutions. The second is that justice must be enforced in both the public and non-public spheres and, as such, justice must be the subject of the family.

How the principles of justice apply is nuanced. Rawls clearly states: “The principles of political justice are to apply directly to this structure, but they are not to apply directly to the internal life of the many associations within it, the family among them” (Rawls 2001, 163). This may sound like a contradiction. What Rawls means by the indirect application is as follows: Firstly, by ‘principles of justice’, he specifically states that the application of the first principle of justice and aspects of the second principle applies. These ‘aspects’, as mentioned earlier, are equality of opportunity, the social minimum, and an open society. This is because the indirect application must secure the basic rights of individuals and political values of liberty and equality (ibid.). By the phrase “not to apply directly to the internal life”, Rawls is

⁸² This argument could be extended to protect other marginalised groups with non-traditional family relations such as queer families.

suggesting that the principles of justice should not regulate or intervene in all aspects of these associations even though they may fall within the basic structure (ibid.). The principles of justice constrain institutions to within the demands of the principles of justice. Yet still allowing room for citizens to construct the internal life of the family how they see fit, such as leaving room for individual's preferences for family life, viz., choosing a nuclear or childless family.

In Chapter 3, I break down this subtle application of the principles of justice to other associations such as educational and associational institutions. For now, it is pertinent to acknowledge that this nuanced application of the principles of justice should be applied to all other associations in the basic structure—such as churches and universities—and not only to the family. The reason being is that insofar as there is no place exempt from justice for Rawls in justice as fairness, then there is no institution that is exempt from the demands of justice.

As discussed earlier, political society needs to carefully balance and protect its citizens' right to freedom of conscience and freedom of association. The best way this can be done for Rawls is to not impact on the internal running of organisations and institutions directly. By this, Rawls means that he does not want to use coercive state influence to restrict the running of these organisations, but rather use the first principle of justice as a constraint for associational life and moral doctrines. This constraint of the right will still require these organisations, in an indirect manner, to reform themselves in line with the standards of justice. This constraint of justice, Rawls (2005, 469) claims “guarantee the basic rights and liberties, and the freedom and opportunities” to all persons, as persons are fundamentally citizens and secondly members of an institution. This quote highlights the importance of equal opportunity (along with a social minimum and open society) as part of the political values that must be held in both the public and non-public sphere.

To illustrate this protection of the constraint of the right, a wife would be protected from her husband against physical or sexual abuse, since these actions would disrespect her rights as a citizen. Yet, given that the constraint of justice is indirectly applied, it gives members of the family freedom to construct their version of the family along with their conceptions of the good and rational life plans (ibid., 469). Thus, Rawls would not prescribe citizens' religious convictions, or how they choose to show affection or nurture their relationships. It is left up to individuals to choose how they wish to express their affection. As such, Rawls would not

prescribe to citizens the so-called “love languages” they must use to nurture their relationship.

To expand on this illustration, the constraint of justice would not regulate the sexual morality of its citizens as that could result in the state enforcing comprehensive moral values on its citizens (ibid., 458). If monogamy were necessary for securing the freedom and equality of women in society, only then could the state be justified to enforce monogamy as a feature of the institution of the family (ibid.). Rawls demonstrates this standpoint in the following quote:

“Thus, in considering whether to make homosexual relations between citizens criminal offences, the question is not whether those relations are precluded by a worthy idea of full human good as characterised by a sound philosophical and non-religious view, nor whether those of religious faith regard it as sin, but primarily whether legislative statutes forbidding those relations infringe the civil rights of free and equal democratic citizens” (ibid., 458).

The South African constitution, specifically the Recognition of Customary Marriages Act of 1998, sets conditions in which to ensure the equal status of women in polygamous marriages. In Section 6 of the act it states:

“A wife in a customary marriage has on the basis of equality with her husband and subject to the matrimonial property system governing the marriage, full status and capacity, including the capacity to acquire assets and to dispose of them, to enter into contracts and to litigate, in addition to any rights and powers that she might have at customary law”.

Women in a polygamous marriage have their equality secured by the constitution insofar as they are given equal status. They are entitled to equal rights (including property and inheritance rights), all wives are required to receive the same spousal support, and all wives must consent if the polygamous marriage is to expand. The Recognition of Customary Marriages Act is an example of legislation that can safeguard the equality and liberties of partners in a polygamous marriage. This example highlights how wives in a polygamous marriage not only have their basic liberties and equalities secured, but also have their equal

opportunities secured, insofar as all wives are entitled to the same basic minimum resources as one another.

Similarly, the South African Civil Union Act of 2006 offers an example of legislation that can be implemented in liberal constitutional democracies to safeguard the liberties and equalities of persons in same-sex marriages and civil partnerships. Thus, this Act shows the potential kind of constraint of the right on the good in family life. The liberties and equalities of all members of the family are protected by legislation such as this, yet this legislation still allows room for individuals to decide how they wish to construct their family life. Hence, a Rawlsian citizen could choose between forming a civil union, having a polygamous marriage or a same-sex marriage, and yet still adhering to the political values of justice. Any of these versions of the good that these citizens choose to uphold can be accommodated by the constraint of the right on the family. This stresses that the indirect application of the first principle of justice, along with equal opportunity and the social minimum of the second principle, can accommodate many forms of the good, so long as they respect the constraint of the right.

Considering these examples, the basic rights of children and the equal rights of women and men must be upheld and secured in both the public and non-public spheres unconditionally (Rawls 2005, 471). Adherence to these principles does not imply that the state should intervene and tell families how to raise their children or structure their household. For example, families do not have to apply the difference principle directly to sort out disagreements between the distribution of goods within the family. Rather, the family can employ their own conception of justice for the distribution of goods in their household, such as distributing goods to children based on the completion of chores. At the same time, family law does secure certain rights for children and enforces certain responsibilities on parents. Parents have the responsibility to ensure the education of their children, a safe household for them from physical abuse, and provide them with medical care (Rawls 2001, 165). Thus, similar to the example of polygamous marriages where the wives' equal opportunity is secured, the indirect application secures children's equal opportunity, insofar as parents and the state have an obligation to secure children with a social minimum.

In terms of the education of children, it is crucial that both educational and familial institutions ensure that children's moral development is cultivated and that they are educated to internalise the political values of society to ensure the reproduction of society itself (Rawls

2005, 470). The state then can intervene in family life if there is a direct threat to the moral development of children. The intervention is restricted to ensuring the values of justice, but it does not require intervention on the moral values children learn from comprehensive doctrines. This, for Rawls, is the most legitimate manner to make citizens behave justly.⁸³ The constraint of the right on the family is important to ensure that individuals' capacities for citizenship are adequately developed (i.e., their sense of justice). The significance and development of moral reasoning necessary for just citizens is what I address in the next subsection.

IV The three stages of moral development

In the introduction, I stated that the moral psychology Rawls relies on, namely the three stages of moral development, form part of the presuppositions of justice since they are the necessary features for the moral development of just citizens. Rawls adopts these three stages of moral development from Jean Piaget and Lawrence Kohlberg.⁸⁴ All three stages of development, i.e., morality of authority, morality of association, and morality of principles, explain the ties of affection children and citizens learn from and reciprocate to one another through various forms of interaction. Rawls refers to these stages as principles of reciprocity insofar as these different stages of development account for how citizens learn to be just through mutual cooperation in all associations in their lives.

The three forms of moral development that help to form citizens' sense of justice and the sense of the good are as follows. Firstly, morality of authority is developed in persons when they themselves observe and learn the behaviour and responses of citizens who currently exercise the political values and live according to the requirements of justice (Rawls 1999a, 409–413). In this form of moral development, a sense of justice is imparted to others via echoing the behaviour of others. For instance, here children could echo the behaviour of their

⁸³ For further discussion on how moral development creates just citizens see: Lötter, H. 2001. 'How Can a Society Make its Citizens Just?', *South African Journal of Philosophy*, 20, 1, pp. 90–101.

⁸⁴ See footnote 6 on page 403 and footnote 8 on page 404 in *A Theory of Justice* (1999), where Rawls states that his concept of moral development is an extension of moral psychology developed by Jean Piaget and Lawrence Kohlberg. See: Piaget, J. 1965. *The Moral Judgement of the Child*. New York: Macmillan, and, Kohlberg, L. 1984. *The Psychology of Moral Development: The Nature and Validity of Moral Stages*. San Francisco: Harper and Row.

parents or teacher, if they are shown the necessary love⁸⁵ and support. Building affective ties is essential at this stage of moral development as it is necessary for children to develop a sense of self-worth.

A second way a sense of justice is fostered in citizens is via the morality of association. Here citizens learn how to be just through the associations they belong to. Institutions such as families, schools, and religious organisations require their members to be able to uphold a shared (non-political) conception of justice that controls the internal running of their organisation. By members learning to acknowledge their collective participation in carrying out a conception of justice, citizens are able to acknowledge how mutual cooperation is to their benefit. The values of reciprocity and civility are cultivated here by citizens recognising their duty to their members (ibid., 412).

Adhering to the morality of principles is the third way in which citizens develop their sense of justice and is the last of the three as it is a result of the outcome of adhering to the former two methods of moral development. In this stage of moral development, citizens reflect on their position within associations and how their actions carried out here are aligned with the requirements of justice. Just as citizens understand the benefits of mutual cooperation within their associations, they learn how these benefits of cooperation can be extended to broader political society. However, at this stage, mutual cooperation does not rely on ties of friendship as it did in the morality of association, ties that are formed between members due to their similar commitment to and recognition of a shared agreement on a moral truth claim. At this last stage, citizens cannot form ties of friendship in this manner, instead, Rawls states that civic friendship is a possibility that results when citizens acknowledge their shared commitment to the principles of justice and maintain adherence to political values for their shared benefits (ibid., 415).

I return to this discussion in Chapter 3 to further demonstrate how both non-voluntary institutions and voluntary associations help to reinforce individuals' commitment to political values and social cooperation. This is achieved by their capacity for a sense of justice, which

⁸⁵ For a discussion of the role of love and the moral obligations it requires of Rawlsian citizens, see: Voice, P. 2022. 'Love: The Vices of Love and Rawlsian Justice' in Luppi (eds) *John Rawls and the Common Good*, Routledge: New York.

forms as a result of the three stages of moral development. For now, let us look at why Rawls chose to present the conception of the person as he did.

As discussed above, the three stages of moral development account for how citizens develop their capacity for a sense of justice via the reciprocal relations they develop during these stages. Thus, citizens learn how to be just, first and foremost, through their engagement with all organisations whether they are voluntary (such as a church) or involuntary (such as a family). The question I ask, is what do the requirements of justice impose on the internal running of organisations, and does this imposition limit the internal freedom members of these associations have to run their organisations as they see fit?

Thus an apparent answer may be that the internal running of an organisation would not be impacted in Rawls's conception of justice since, as Rawls states, the principles are not to be directly applicable to the organisations themselves and should only apply to these organisations, inasmuch as they set boundaries for which these organisations should exist within. However, as shown in the marriage example, in the previous section. I suggest how this requirement of justice constrains the kind of ideas of marriage that is acceptable, to the degree that those individuals forming a marriage must respect the basic liberties and equalities of one another. This constraint does not impose a comprehensive doctrine of the good, as it can accommodate many forms of moral life. The boundary of the right requires organisations or any form of associational life to make sure they align with the political values of the principles of justice. This requirement is essential as the constraint of justice prevents basic harms to citizens in both the public and the non-public sphere. With this constraint, Rawls is able to protect marginalised individuals in the non-public sphere. The implication is that organisations would be required to reform the internal running of their organisation to ensure they meet the constraint of justice necessary to secure the reproduction of a just society. These boundaries of justice show how deep and wide the principles of justice apply across a society founded on Rawls's notion of justice as fairness as a political conception of justice. It is the limits of these boundaries that will be scrutinised in the following chapter.

2.4 Conclusion

In *Political Liberalism*, Rawls asks: "How can justice as fairness use ideas of the good without making claims about the truth of comprehensive doctrines?" (Rawls 2005, 209). The

aim of this chapter is to demonstrate Rawls's answer to his above-proposed question by addressing how and why Rawls develops a freestanding conception of justice and extends the demands of justice to both the public and private sphere of his theory of justice. To illustrate this necessity, I unpacked Rawls's argument in the two main sections, the presuppositions of justice and justice as a constraint for a stable society. The purpose of this chapter division is to differentiate Rawls's key assumptions of a justice society from his conception of justice and its demands.

To summarise, the core presuppositions of justice for Rawls are as follows. Firstly, the principles of justice are to apply directly first and foremost to the basic structure of society since these institutions are fundamental to the development of citizens as free and equal persons. For Rawls, it is essential to remove inequalities and injustices from the basic structure of this sphere first as this is the fundamental sphere that impacts how citizens socialise and relate to one another. His hope is that if justice in the basic structure can be settled then questions of justice in the background culture could be settled as a consequence of this. Thus, removing inequalities from the basic structure would have a ripple effect in society.

Secondly, in order to arrive at principles that will ensure a just and basic structure, Rawls develops specific conditions and constraints of the initial agreement. The procedural mechanism of the veil of ignorance enables the neutrality of outcome for the hypothetical decision procedure of the original position. Since the initial contract is constrained by the neutrality requirements of the veil of ignorance, this procedure and the subsequent four-stage sequence embodies Rawls's conception of persons as free and equal and society as a fair system of mutual cooperation. This four-stage sequences offers citizens a hypothetical test in which to judge if the social, political, and economic policies secured by the constitution and legislative requirements are the best current articulation of the principles of justice. If not, as Rawls deems is highly possible, citizens are able to engage in and argue for constitutional or legislative changes that can better account for the liberties, equalities, and fair standards for cooperation.

This leads to the third presupposition, the conception of the person. As discussed, Rawls views the person as having two distinct features: a capacity for a sense of justice, and a sense of the good. Both of these are necessary to exercise when participating in a just society, but hold different functions. The sense of justice is a capacity that enables citizens to have

reasonable judgment, meaning they can formulate and agree to political principles that are freestanding of their conception of the good. In contrast, a sense of the good is the capacity a citizen has to form rational judgements. This capacity should be exercised when citizens carry out their rational life plans; it is not appropriate to rely on this judgement for principles of justice as that would lead to principles being motivated by comprehensive moral values that not all citizens can consider reasonable. Both moral powers and their forms of reasoning have to be fused together to ensure that citizens have a cohesive moral development.

The fourth presupposition I identify, tied to this conception of the person, is the condition of reasonable pluralism. Since persons have the ability to determine and pursue their own moral ends, a state-imposed moral doctrine would be considered unjust for Rawls as it promotes one comprehensive doctrine at the expense of others. This emphasis Rawls places on treating comprehensive doctrines fairly, in that none are given preference from the state, is precisely how he argues he develops a freestanding view of justice, while still relying on ideas of the good.

The ideas of the good he does invoke in his presuppositions of justice are political ideas, insofar as the view of the person, the fact of moral pluralism, and the priority of liberty and equality are ideas of the good of democratic society and not of one particular comprehensive doctrine. It is the political ideas of the good that Rawls secures in his theory of justice as fairness with the introduction of an overlapping consensus and public reasons for justification. This intricate relationship Rawls develops between political ideas of the good and the space he gives to individuals to develop comprehensive doctrines is what I drew attention to in Section 2.3 of this chapter.

Moreover, in this section, I demonstrated that, for Rawls, stability for justice as fairness rests on the development of congruence between the right and the good. This congruence was discussed in this chapter in a number of ways. Firstly the constraint of the right on the good was demonstrated in the discussion of moving from pluralism to reasonable pluralism and, similarly, comprehensive doctrines to reasonable comprehensive doctrines. The demarcator of reasonable accounts for how the possible conceptions of the good that are acceptable are those held by reasonable persons who are able to align their comprehensive moral values with the political values of justice.

Secondly, the complementary nature of the public and non-public spheres is important for Rawls. These spheres are distinct in that they require citizens to use different methods of reasoning for the justification of political and economic policies, compared to the kind of reasoning that citizens can rely on to construct their rational plan of life. Yet both spheres are the subject of justice, in that there is no place that can be removed from the demands of justice. This requirement is necessary in order for both spheres and the respective forms of reasoning to complement one another.

This complementary nature of public and non-public reasons and spheres is one of the later revisions Rawls develops in response to critiques of injustice in the private sphere. Ensuring injustice is not perpetuated in the private lives of citizens, Rawls extends the principles of justice to apply indirectly to the family. By indirectly, he means that liberty and equality of persons needs to be categorically upheld as a constraint of the right, even if this requires that some ideas of the good within the family relation be restricted (i.e., those that cannot respect the basic liberties and equalities of its members). Thus, this indirect application is adherence to the first principle of justice and aspects of the second principle (namely the idea of equal opportunity, a social minimum and the need for an open society). This adherence ensures that a comprehensive moral value system that promotes same-sex marriages, polygamous marriages, or civil partnerships could still be possible ideas of the goods as long as there is appropriate legislation that extends to the family to safeguard the liberties and equalities of members.

This coherence of the principles of justice and the moral values of citizens is essential for the moral development of citizens. For Rawls, a just society can only be achieved if citizens can develop the necessary capacities to a satisfactory degree that allow them to want to and be able to cooperate with one another as free and equal citizens for mutual benefit. If the capacity for a sense of justice is not adequately developed, this will lead to citizens being unable to form bonds of care and trust with fellow citizens. One's sense of justice can be underdeveloped if they have insufficient development of self-respect due to not building the necessary connections of trust and care with members of their family, peers, or associational members. This idea has not been discussed here but will be addressed in the following chapter.

To conclude, Rawls acknowledges the need for the moral development of citizens to be secured when stating that there is no place in society that the demands of justice do not reach.

This is due to the fact that justice must set the constraints for the associational life of citizens to ensure that their moral development is safeguarded. The following chapter will interrogate these demands of justice on Rawlsian citizens and their most intimate spheres of their lives, which we turn to now.

Chapter 3: Justice as a collective non-comprehensive good⁸⁶

3.1 Introduction

The purpose of Chapter 3 is to show how and why for Rawls the right is prioritised in the non-public sphere of Rawlsian society and, as a result, how and why I claim justice is the collective good all reasonable citizens share. The two main arguments in Chapter 3 are as follows: Firstly, in my reading and interpretation, I intend to show that even after Rawls's political turn, justice should not only be the first virtue of the basic structure of society but also is the first virtue of all social associations. Thus, I claim that justice is the first virtue of the background culture (i.e., civil society) in the theory of justice as fairness. Before presenting my argument, I discuss Nancy Rosenblum's argument for why liberal expectancy between political norms and private associations is unwarranted and not desirable for liberal democracies. This dialogue aims to demonstrate an alternative reading of Rawls's view of associations.

Secondly, I argue how and why justice is a collective non-comprehensive good in Rawlsian society. To substantiate this claim, I examine the institution of the family to show how Rawls applies the principles of justice to this association, whereby the content of the right enforces strict parameters on the family. These parameters are necessary since the family is home to the first stage of the moral development of children. These parameters are necessary, on the one hand, for children to acquire and exercise the political values of justice, while, on the other hand, crucial for children's capacities to develop citizenship. These aspects enable citizens to be independent, self-actualising members of society. Without these parameters, children who are raised in an unjust family structure may not develop the necessary capacities and values needed to be a contributing member of a just society.

Similarly, since education is crucial to the development of the second stage of children's moral development, I demonstrate that political values have to be prioritised in educational

⁸⁶ This chapter, in addition to the guidance of my supervisors, has benefitted from the suggestions and criticisms of David Reidy, Catherine Elgin, Paul Voice, and Darrell Moellendorf. Parts of my argument in this chapter were presented at the conferences 'The Right and the Good in John Rawls's Theory of Justice' held by CAIR and the Department of Philosophy at the University of Pretoria and at 'Reflective Equilibrium: 51 Years after A Theory of Justice' co-hosted by the Department of Philosophy at the University of Bern, the Karlsruhe Institute of Technology, and the Institute for Future Studies (Stockholm).

institutions to continue the full development of a child's capacity for citizenship. I illustrate how justice is the first virtue in education insofar as the political values have to be given priority to secure citizens' liberty, equality, and equality of opportunity. Lastly, I finalise my argument with voluntary associations, where I justify that even in fully voluntary institutions, justice is still the first virtue since all members of associations are fundamentally citizens first and foremost.

This discussion illustrates the depth of the priority of the right within associations in Rawls's theory of justice as fairness. I am not suggesting that the priority of the right determines all aspects of the internal running of organisations. This would be incorrect; the priority of the right restricts the good, thus requiring the good to adhere to freedom, equality, and equal opportunity⁸⁷ of persons. If that condition is met, the good can be diverse. In other words, Rawlsian citizens could choose to find meaning and value in life from vastly different and even conflicting conceptions of the good. Conflicting insofar as these plural conceptions of the good construct meaning and value in dissimilar ways.

In the final section of this chapter, I show how justice as the first virtue of all associations helps to ensure stability within justice as fairness, as it secures the congruent relation between the right and the good. The culmination of this, I argue, is that justice is the collective good all reasonable citizens share. Understanding justice as the collective good does not undermine the priority of the right, since the content of justice is not dependent on one comprehensive doctrine. Instead, justice is a shared set of non-comprehensive values that overlap and are reinforced within comprehensive doctrines. Justice as a non-comprehensive good can only be realised through the collective participation of all citizens in the actualisation of the political values.

This chapter lays the foundation for Chapter 4, in which I argue that current liberal societies are unstable. Justice as a shared non-comprehensive end has not been realised because this relation of strict congruence, I present in this chapter, has not been achieved. There is no fusion of the moral powers of persons or spheres of society necessary for congruence between the right and the good, resulting in citizens not being able to form bonds of civic

⁸⁷ A reminder, when I refer to equal opportunity, I am referring to the idea of liberal equality that Rawls regards as a constitutional essential, which contains the ideas of a social minimum and an open society, as discussed in Chapter 2.

friendship key for a Rawlsian stable society. Returning to the focus of this chapter, in contrast to my argument for strict congruence, I now turn to Nancy Rosenblum's argument for why associations should not be forced to liberalise, or in other words, internalise the basic requirements of justice into their private associations.

3.2 A critique of congruence

Although the below discussion I provide of Rosenblum's argument is brief⁸⁸, it is important as she offers one of the strongest theoretical arguments in political philosophy, supported by sociological justification for the critique of strict congruence between political norms in the public sphere and private associations. The freedom to associate or dissociate has a long tradition in liberal political thought tracing to Tocqueville⁸⁹ in the Western canon. More has been written since Rosenblum's argument presented in *Membership and Morals: The Personal Uses of Pluralism in America* (2018)⁹⁰ and in 'Compelled Association: Public Standing, Self-Respect' in *Freedom of Association* (2020).⁹¹ The point of including Rosenblum's argument is to contrast her interpretation of the early Rawls and his view of associations with my interpretation of the later Rawls's view. This dialogue should not be read as a critique of Rosenblum's argument, since her argument was published in 1998 and based on Rawls's early works. Instead, I propose to offer an alternative reading of later Rawls's interpretation of associations, specifically concerning changes he made after his political turn and in consideration of his communitarian and feminist critics.⁹² First, I present Rosenblum's argument against strict congruence.

Rosenblum suggests that associational life is inherently complex. How to reproduce liberal norms or reduce antiliberal sentiment and values will vary due to the interpersonal and subjective nature of a person's sociological existence. Rosenblum (2018, 48) claims that

⁸⁸ See *Membership and Morals: The Personal Uses of Moral Pluralism in America* for a comprehensive presentation of Rosenblum's argument.

⁸⁹ See: Tocqueville, A. 1969. *Democracy in America*, New York: Doubleday Anchor, pp. 513–517.

⁹⁰ This book is the latest edition of *Membership and Morals: The Personal Uses of Pluralism in America*, first published in 1998.

⁹¹ This book is the latest edition of *Freedom of Association*, first published in 1998.

⁹² A reminder when I refer to later Rawls I am referring to his last seminal works such as *Justice as Fairness: A Restatement* (2001), *Political Liberalism* (2005) including part 4 'The Idea of Public Reason Revised'.

some liberal and other antiliberal norms, or personal dispositions will not necessarily spread across associations, to suggest this transference is optimistic.

In contrast to her stance, my claim that the priority of the right as necessary for all associations is problematic since Rosenblum claims that it is not self-evident that there will be a ‘transmission belt’ effect, whereby values or dispositions in one association will necessarily spillover into another. This stance needs sociological justification, which she provides in *Membership and Morals* (2018, 48), and I touch on it below. How then does Rosenblum interpret the role of associations in Rawls’s theory of justice?

In response to Rawls’s claim for the necessity of morality of association specifically, and the three stages of moral development in general, Rosenblum (ibid., 53) asks:

“If we step outside this ideal framework, why should we expect that a plurality of associations with freely articulated social roles and rules prepare members for either a reflective commitment to principles of justice or any liberal democratic disposition?”

Rosenblum demonstrates how different illiberal associations, whether they are vocational, scientific, religious, paramilitary, or secret societies, can encourage cooperation and reciprocity among their members. A case in point, paramilitary groups such as the Boy Scouts require members to learn social and physical cooperation, discipline, mutual trust, care, and affection for one another, yet they are exclusionary insofar as their membership is restricted to male persons (ibid., 244). Moreover, she appeals to sociological evidence of individuals in liberal democracies that can exercise different moral values in different aspects of associational life (ibid., 49). How individuals interpret power relations, for example, is informed by a mixture of one’s social context and one’s psychology (ibid.). By way of illustration, to expand on Rosenblum’s example of “fairness in hiring”, an individual may be able to exercise the capacity for equal opportunity in one social context, while in another context hold the moral value that all genders are not equal in intellectual ability (ibid., 50).

For these reasons, Rosenblum argues that incongruence is acceptable between political values in the basic structure of society, and the plural moral ideals held by associations, so long as cooperation and reciprocity are encouraged between members in their forms of associational life. She reaffirms her position, by stating that Rawls does not give restrictions to

associational life other than opposing slavery and serfdom (ibid., 55). Thus, for Rosenblum, if Rawls only requires associational life to encourage citizens to exercise cooperation and develop affectionate ties among themselves, then the morality of association would be achieved even in illiberal associational structures.

Rosenblum (2018, 50) extends her critique of liberal expectancy (the term she uses for strict congruence) by arguing that moral deviance to liberal values is a natural part of liberal society. Freedom of association protects citizens' rights to freely choose how and with whom they wish to associate. The freedom to associate implies citizens have the freedom to dissociate from one another, and the right to include or exclude persons from their associations (Gutmann 2020, 11). Compelled associations are present and acceptable in the political realm of society but to insist on congruence of democratic values in all associations would contradict the right of freedom of association itself. Members of voluntary associations have the right to determine the criteria for membership in their associations (Rosenblum 2018, 158). Restrictions on membership are expected; if voluntary associations were open for membership to anyone, membership to these associations would give the impression that they are public as opposed to private associations (ibid.). More importantly, Rosenblum (ibid., 158–159) continues:

“The whole point of association is exhibition of some exemplary difference, whether the motivation is snobbery, celebration of a distinctive social identity without any pretence of superiority, or defensive self-protection.”

Thereby, open membership would undermine the purpose of voluntary institutions themselves. The whole point is liberal society encourages moral pluralism, which necessarily implies a diverse set of moral values that are exclusionary in nature based on their version of the good. In this case, Rosenblum suggests there should be social space for individuals to join associations that may encourage illiberal norms or restricts membership to certain groups of citizens (ibid., 160). One should not aim for correcting anti-democratic sentiment, values, or behaviour in voluntary associations, instead containing these anti-democratic values in associational spaces is the goal.

In Rosenblum's discussion of *Roberts versus Jaycees*⁹³, the Jaycees is a private association with the purpose to help men between the ages of 18 and 35 with similar desires and dispositions advance in business. Women were allowed to join, yet were never able to hold the status of full membership. When Justice Brennan ruled and compelled the United States Jaycees to allow women to be full or regular members and accept young men, Rosenblum (2020, 78) claims that this compulsion changed the purpose and goal of the institution. More problematic for her is that this decision removed the Jaycees right to freedom to dissociate, in the name of promoting core democratic values such as liberty and equality.

For Rosenblum, acknowledging that citizens have the right to privately discriminate within voluntary associations is "a key source of self-respect" (Rosenblum 2018, 162). Citizens gain self-respect from being part of an association where they know they are chosen and wanted members. Thus, the self-respect of citizens is enhanced for citizens that have the traits that make them attractive members of voluntary associations, such as men between the ages of 18 and 35 in the Jaycees. One must then ask what happens to the self-respect of the women and young men who were excluded from full membership.

The decision to rule in favour of the women was argued on this point, of the women's self-respect being harmed by this exclusion. Women were seen to be second-class members of the Jaycees (since they were not full members); this unequal status impacted their dignity and self-respect (Rosenblum 2020, 82). Rosenblum asserts that the unequal status of membership in a voluntary association⁹⁴ does not necessarily imply that these citizens will have an unequal status of worth in political standing; in her words, "second-class membership does not imply second-class citizenship" (ibid., 87).

Rosenblum extends her critique of a transmission-belt interpretation of values in associations to the second-class membership/citizenship relation. As discussed higher up, Rosenblum suggests that congruence of liberal values in voluntary associations and public institutions is not necessary, since there is sociological evidence to support the fact that there is not always

⁹³ *Roberts v. U.S. Jaycees*, 468 U.S. 609 (1984).

⁹⁴ To note, Justice Brennan ruled that membership or lack of membership in the Jaycees enabled its members to access public goods, hence women that lacked this membership may lack the ability to have equal access. It is beyond the scope of this thesis to discuss if the Jaycees are a purely primate voluntary or semi-public association. For further discussion, see Rosenblum's argument in *Membership and Morals: The Personal Uses of Moral Pluralism in America* (2018), especially Chapter 6 and Chapter 4.

a ‘spillover’ of values from one sphere to another (Rosenblum 2018, 173). She notes that the argument for second-class membership implying second-class citizenship is based on the same concern of this ‘spillover’, but, in this case, it is the treatment of members and not values. By way of illustration of the point, “those who have trouble treating women as equals at clubhouse lunches will not readily escape such difficulties in corporate suites or smoke-filled rooms.” (Rhodes 1994, 285).

Rosenblum suggests that this argument that discrimination in one sphere will spillover into another sphere is simplistic since it does not account for the complexity of moral psychology, where persons can differentiate between socially accepted behaviour and ways of treatment of individuals in different spheres of associations to which they belong (Rosenblum 2020, 88). Thus, this spillover logic discounts individuals’ capacity for awareness of the difference in a social context (ibid., 89). The most concerning aspects of this congruence argument for Rosenblum are, one, compelling associations to uphold political values interferes with the association’s self-chosen purpose and, two, these voluntary associations and members should not be forced to promote the public political values of the state (ibid., 89–90).

Not only does Rosenblum suggest that second-class membership does not imply second-class citizenship, but she argues that proving that second-class citizenship harms one’s self-respect is challenging (ibid., 91). Firstly, self-respect is too vague due to it being a subjective experience to prove that it has been harmed. Secondly, we have limited knowledge of the conditions that instil, damage, prevent, or rectify the self-respect of persons (ibid., 91–92). Thirdly, to suggest that one’s self-respect will always be determined or affected by one’s public and social position is an exaggerated claim. Multiple sources of self-respect extend beyond one’s public position. Rosenblum (ibid., 94) suggests that one source of self-respect could be “in resigning oneself to mistreatment for the sake of fulfilling other obligations such as supporting a family”. In contrast, a source of damage to one’s self-respect could be performing work society or the individual considers degrading (ibid.). To place the burden of instilling, preventing, or rectifying self-respect on associations by turning them into “mini-liberal democracies” is not achievable or appropriate (ibid., 92).

Furthermore, Rosenblum challenges that it is wrong to insist that an individual’s self-worth is determined or influenced by recognition (or lack thereof) of membership since it firstly presupposes that exclusion implies harm and, secondly, that targets of exclusion have no other social recourse. Lastly, she argues that exclusion may not necessarily be a harm to self-

respect, it may purely be an injury to one's character or self-pride (ibid., 95). Members excluded from some associations will find an expression of themselves in another association, while the exclusionary nature of voluntary associations is a haven for its member's self-respect when individuals are confronted by sources that damage their self-worth. Such as, "innumerable self-help groups, fellowship groups, and self-styled 'identity groups' form around personal disabilities and social disadvantages, stigmas, real or imagined victimisation, disappointment, and rejection of all kinds" (ibid., 97).

Rosenblum bolsters her argument that public acknowledgement alone is not the sole source of an individual's self-respect by appealing to Rawls. She notes that Rawls acknowledges that beyond the rights and liberties inferred and protected by the principles of justice, individuals need private spaces (intimate and voluntary associations) in which to express their personal moral values. It is in these spaces, with like-minded individuals, that citizens can enhance their self-respect as their opinions and character are reaffirmed. Hence, membership in associations can help to reduce the fear of failure, the need for competition, social discontent, the effects of economic inequalities, or self-doubt individuals may feel in public spaces (ibid., 97). From the justifications described above, Rosenblum considers it unlikely that second-class citizenship will be a direct result of second-class membership in liberal democracies since associations are not the sole source of self-respect of persons. Nevertheless, she regards second-class citizenship as wrong, regardless (ibid., 91).

In contrast to Rosenblum, I propose that for Rawls justice should be regarded as the first virtue of all social institutions, by this I mean the political values of the first principle of justice needs to be categorically upheld in civil society. In support of this stance, in the remainder of this chapter, I demonstrate that Rawls's need for congruence between the right and the good extends across both the public and non-public spheres. This congruence is nuanced, both in terms of the application of the first principle, and the outcome this application has on associational life and citizens' ideas of the good⁹⁵ across domains of society. I suggest that the priority of the right requires the reshaping of the good. This reshaping would be realised differently across the background culture within associations such as schools, the family, and voluntary associations. The core feature of this reshaping would be the requirement that all associations and institutions would need to cohere with the

⁹⁵ Here by good, I encapsulate peoples, comprehensive or partially conceptions of the good, rational life plan, moral values.

content of the right viz. securing and respecting the liberties and equalities of citizens necessary for forming relations of mutual cooperation and ties of civic friendship. Once I have presented my interpretation of Rawls's argument, I respond to Rosenblum in Section 3.4 of this Chapter.

3.3. Recap of the priority of the right

As stated in Chapter 2, questions of civil society and associations fall into the realm of background culture as opposed to the basic structure of society for Rawls. The later Rawls acknowledges that it would be a mistake to interpret the public and non-public sphere divide as implying that there are spheres within justice as fairness that are exempt from the (direct or indirect) application of the principles of justice. Given this, then, questions of civil society and how citizens can associate within Rawls's theory of justice become pertinent as the basic structure and background culture within a Rawlsian society reinforce one another for justice to be possible.

Later Rawls himself acknowledges, just as other authors such as Gutmann (1985)⁹⁶, Macedo (1988, 1991, 1992)⁹⁷, Nagel (1987)⁹⁸, and Nussbaum (2011)⁹⁹ have pointed out, that although political liberalism is procedurally neutral, liberal principles themselves promote substantive moral values that do delineate reasonable comprehensive doctrines from the unreasonable, as I discussed in Chapter 2. This distinction highlights the fact that the requirements of justice result in some comprehensive doctrines flourishing, while others do not.

The major condition for comprehensive doctrines to flourish is that they must adhere to the constraint of the right. Doctrines will fail to gain support from citizens if they are in direct conflict with the right, such as slavery, or those doctrines that wish to reform the basic

⁹⁶ See: Gutmann, A. 1985. 'Communitarian Critics of Liberalism', *Philosophy & Public Affairs*, 14, 3, pp. 308–322 & Gutmann, A. and Thompson, D. 1990. 'Moral conflict and Political Consensus', *Ethics*, 101, 1, pp. 64–88.

⁹⁷ See: Macedo, S. 1988. 'Liberal virtues, Constitutional Community', *The Review of Politics*, 50, 2, pp. 215–240; Macedo, S. 1991. *Liberal Virtues: Citizenship, Virtue, and Community in Liberal Constitutionalism*. Oxford: Clarendon Press; and Macedo, S. 1992. 'Charting Liberal Virtues', *Nomos*, 34, pp. 204–232.

⁹⁸ See: Nagel, T. 1987. 'Moral Conflict and Political Legitimacy', *Philosophy & Public Affairs*, 16, 3, pp. 215–240.

⁹⁹ See: Nussbaum, M, C. 2011. 'Perfectionist Liberalism and Political Liberalism', *Philosophy & Public Affairs*, 39, 1, pp. 3–45.

structure by inserting their conception of the good as the comprehensive good of society (Rawls 2005,196). Both kinds of unreasonable doctrines would not flourish as they disrespect liberty and equality as presuppositional moral values of the liberal tradition. In other words, those doctrines that acknowledge and support the substantive non-comprehensive moral claims of justice (freedom, equality, and equal opportunity¹⁰⁰ as essential values and other political values of tolerance, civility, and solidarity, to name a few) enable the possibility for an overlapping consensus of reasonable doctrines.

Furthermore, reasonable comprehensive doctrines mirror the features of reasonable persons. Just as reasonable persons disagree about moral truth due to the burdens of judgement, they can revise their position in light of the content of the right. Likewise, comprehensive doctrines are reasonable if they too, over time, are revised. Yet this moral prescription does not undermine the priority of the right, as the content of justice does not rely on, or promote a singular comprehensive doctrine of the good. Even though later Rawls regards his theory as not fully comprehensive, he acknowledges that the priority of the right does include political or general notions of the good. General notions of the good are the moral sentiments of the liberal democratic tradition.

Firstly, the priority of the right implies that in the public sphere only political ideas of the good can be used. Insofar as persons choose to make justifications for their values, actions, or policies in the public domain, persons must appeal to the principles of justice, political virtues, and the five ideas of the good. This condition enables diverging comprehensive doctrines to uphold and accept the standards of justice since it constrains public arguments to the condition of reasonability. Given this, if a moral issue arises for the state to address, then citizens must make public justification for or against the claim by appealing to the principles of justice and political ideals of the good and not their own comprehensive doctrines.

Secondly, the priority of the right is evident in political liberalism when Rawls states that not all comprehensive moral doctrines can coexist. Precisely because the content of justice is

¹⁰⁰ Note, in Chapter 2 I explained that the second principle of justice does not form part of the constitutional essentials, however, some aspects do. These aspects are features of equality that demonstrate that society should be a fair and mutually beneficial form of cooperation. Thus, ideas such as, the social minimum and everyone having an equal opportunity to hold political or economic positions, insofar as they are not prevented from a position due to their arbitrary features such as class, gender, and race.

prioritised, all comprehensive doctrines that are allowed to exist would need to be aligned with the requirements of justice. In this way, there is a movement from comprehensive moral doctrines to reasonable comprehensive moral doctrines since the latter are compatible with the requirements of justice as they have acknowledged the priority of justice and its demands. For instance, as shown in Chapter 2, an organisation that wishes to perform child sacrifice is an unreasonable doctrine since its justification of killing children conflicts with the values of justice such as liberty and equality of persons.

Thirdly, the priority of the right means that the content of justice is given precedence over all other notions of the good. The priority of the right helps to ensure stability as it enables citizens to have agreement on the requirements of justice while respecting the burdens of judgment. Acknowledging reasonable moral pluralism enables a Rawlsian society to allow adequate space for citizens' rational life plans, as it encourages consensus in the public sphere while catering to disagreement in the non-public sphere. This distinction between the public sphere on the one hand and the non-public sphere on the other should not be understood as independent and separate from one another (ibid., 471). As I mentioned above, the constraint of the right in the public sphere extends into the non-public sphere, demarcating reasonable and unreasonable moral doctrines. Both spheres are interconnected and fluid and the values in each should reinforce one another. Let us now turn to how the first principle of justice is prioritised in the non-public sphere, and why this is necessary.

3.4 Associations necessary for the cultivation of citizenship

Rawls is explicit when he discusses the concept and the requirements of justice as it applies to the basic social structure. In this domain, Rawls makes it clear that justice is the first virtue of all institutions in the basic structure. This can be seen with the priority of the right in this domain. In this section, to demonstrate why I argue that justice would be the first virtue of every association in a Rawlsian society or, in other words, why the first principle of justice must be the categorical constraint of all social and political institutions, I first address the role of the family and education as two core associations for the cultivation of citizenship. Then I discuss the role of comprehensive moral doctrines and how and why the internal running of all three types of associations must invoke the right as a first virtue to ensure the good coheres with the right.

To recap, the later Rawls acknowledges the interdependence of the public and non-public domains when he states: “If the so-called private sphere is a space alleged to be exempt from justice, then there is no such thing” (Rawls 2001, 166). Rawls makes clear the interconnection of these two domains in his discussion of the family. Although we have discussed the role of the family in Chapter 2, it is pertinent now to recap and expand this discussion to see how and why I argue justice is the first virtue of the family.

I The family

The family, for instance, according to Rawls, occupies a position within both domains. On the one hand, the family is an institution within the basic structure insofar as it is a core institution for the development and education of children as citizens (Rawls 2005, 467). As previously mentioned in Chapter 2, the family and the basic structure resemble one another to the degree that both are non-voluntary institutions for citizens or children respectively (Rawls 2001, 163–164). In both institutions, citizens and children occupy a position that they did not freely choose to be in; their historical situatedness is beyond their control. In addition, leaving these institutions is taxing on individuals as these institutions socialise them with the world.

On the other hand, these two institutions differ as follows. The basic structure for Rawls should not be considered as an association, whereas the family is an association. Rawls clearly states, “political society is not, and cannot be, an association. We do not enter it voluntarily” (ibid., 4). He creates this demarcation to show that the basic structure of society cannot be thought of as an association or a community whereby citizens have a shared final comprehensive moral end (ibid., 3). Rawls steers away from this understanding to reinforce that his political conception of justice is freestanding, insofar as it does not promote a community in which a comprehensive doctrine is the shared final comprehensive end among citizens. While the basic structure is a purely political non-voluntary institution, the family is not.

In contrast, the family is also a non-voluntary private association; the difference here lies in the fact that the family could be united under one comprehensive moral doctrine and, thus, can and should be viewed as a community where the members of the association share partiality or fully comprehensive moral values. Thus, the family has aspects of voluntary associations, inasmuch as not all the internal running of the family is prescribed. This allows

citizens to construct their families in line with their individual rational life plans and religious, metaphysical, moral, or philosophical views (ibid., 167–168).

The fact that the family is both a non-voluntary institution and a voluntary association means that the right and the good within the family have to be complementary and must be reconciled with one another. This reconciliation takes place in terms of Rawls separating reasonable from unreasonable comprehensive doctrines. It is this condition of reasonability that extends into family life. Rawls insists on this with the following parameter, “political principles do not apply directly to its internal life, but they do impose an essential constraint on the family as an institution and so guarantee the basic rights and liberties, and the freedom and opportunities, of all its members” (Rawls 2005, 469). This suggests that the principles of justice are not there to prescribe the setup of the institutions themselves. Yet, the content of the right, specifically, the first principle of equal basic liberties and aspects of the first requirement of the second principle, securing equality of opportunity to all (by providing a social minimum and an open society), are invoked as a regulatory boundary. By ‘regulatory boundary’ I mean the principles of justice require the internal running of the institution to be adjusted in line with equal basic liberties and equality of opportunity.

For example, a Rawlsian state would intervene in the family, if the family structure were to negatively impact the development of children as future citizens, such as in cases of child abuse. In this instance, the right demarcates necessary restrictions on family life, as the liberty of children cannot be infringed on. Thus, the boundary of the right is given priority over any philosophical, metaphysical, moral, or religious doctrine within the family. This priority of justice as a regulation on family life is to protect and ensure the responsible cultivation of moral development in children in line with the democratic ideals of freedom and equality that are essential for the reproduction of a Rawlsian society. Thus, I argue justice is invoked as the first virtue of the family since any action that contravenes the protection of freedom, equality, and fair opportunity for its members would be considered an unjust family structure. Rawls affirms this priority of justice in his statement:

“The principles defining equal basic liberties and opportunities of citizens always hold in and through all so-called domains. The equal rights of women and the basic rights of their children as future citizens are inalienable and protect them wherever they are” (Rawls 2005, 471).

To return to the distinction made in Chapter 2, when advocating that the right is given priority as a prerequisite for the family, I am not suggesting that this includes adherence to the difference principle. Rawls does make an unambiguous claim that the difference principle should not be invoked in the internal running of any voluntary association. This is because the difference principle is not a constitutional essential (Rawls 2005, 230). The priority of justice as the first virtue rests on the protection and promotion of the constitutional essentials, namely liberty, equality, and equal opportunity. Insofar as the social minimum is part of the constitutional essentials, family life would have to be structured on fair grounds, while the state would have to provide the primary goods to members in the family necessary for them to have a decent life.¹⁰¹

Now that I have addressed how the right regulates the family, I turn to why this is a necessity. As stated, the family is integral to enable the essential capacity for the sense of justice and political virtues children need in order to help reproduce the institutions of justice (Freeman 1999, 596). Many critics¹⁰² of the early Rawls, and the later Rawls himself (following Mill's claim¹⁰³), acknowledge that the family "is a school for male despotism that inculcates habits of thought and conduct incompatible with democracy" (Rawls 2001, 166). Rawls acknowledges that incompatible values in the family (or other institutions or associations) can undermine adherence to the right in the public domain. As a safeguard, Rawls stipulates "If so, the principles of justice enjoining a reasonable constitutional democratic society can plainly be invoked to reform the family" (Freeman 1999, 598). This extract illustrates that Rawls does call for the rectification of institutions such as the family if their values are not

¹⁰¹ Rawls's concept of the social minimum is not discussed in detail in his later works, in terms of my interpretation, the social minimum seems to be connected to primary goods since these are the social and economic goods that enable citizens to have a decent life.

¹⁰² For an overview, see: Nussbaum, Martha C., 2002. 'Rawls and Feminism' in Freeman, S. (ed.). *The Cambridge Companion to Rawls*. Cambridge: Cambridge University Press. For seminal feminist critiques, refer to: Okin, S.M. 1989. *Justice, Gender and the Family*. New York: Basic Books Inc, especially chapter 7; Okin, S.M. 1989. 'Reason and Feeling in Thinking about Justice', *Ethics*, 99, pp. 229–49; Okin, S.M. 1994. 'Political Liberalism, Justice, and Gender', *Ethics*, 105, pp. 23–43; Nussbaum, Martha C., 1999. *Sex and Social Justice*. New York: Oxford University Press; Nussbaum, Friedman, M. 2003. *Autonomy, Gender, Politics*. Oxford: Oxford University Press; Barbara Walsh, M. 2012. 'Private and Public Dilemmas: Rawls on the Family', *Polity*, 44, 3, pp. 426–445.

¹⁰³ See: Mill, J.S. and Mill, H.H.T. 2009. *The Subjection of Women*, revised edition. Auckland: The Floating Press pp. 79.

compatible with democratic values. Freeman (2010, 237–241) acknowledges the consequences of Rawls’s statement, affirming parents should be prohibited from teaching their children any comprehensive doctrine that would undermine their children’s ability to view minority groups as free, equal, and entitled to equal opportunities.

In agreement with Freeman, I suggest this implication is evidence that the right has to be given priority in the family and justice should be considered the first virtue of the family in order to protect children’s moral sensibilities and their capacity for a sense of justice. As discussed in Chapter 2, the first phase of Rawlsian moral psychological development is morality of authority. Rawls state that if the institution of the family is just (i.e., freedom, equality, and equal opportunity are taught within the family by the parents), then children will develop an affection for their parents once they themselves are nurtured. This feeling of affection evolves into trust and love for parents. In the act of reflecting on the love they have for their parents’, children develop self-worth from the self-love they can reflect on themselves. Children are motivated to listen and respect their parent’s authority and follow the families’ rules from the emotions of love and trust they develop. If children have grown up in an unjust family structure (i.e., freedom, equality, and equal opportunity are not taught within the family by the parents), children may not develop the initial requirements for reciprocity. For instance, if children do not experience care or love from their parents, these children may not develop feelings of trust or the ability to care not only for members of the family but also for their fellow members of society, such as their peers (Freeman 2010, 257).

For example, if parents choose to raise their children with the notion that men are inherently superior to women, the female child may not develop the love and trust necessary for her moral development as she may experience feelings of isolation and inferiority due to not receiving the same respect shown to her male sibling. Yet, the male child may develop stronger bonds of the love and trust for his parents as he may not experience feelings of inferiority due to being given respect.¹⁰⁴ Therefore, because an unjust family negatively impacts children’s psychological development, justice has to be considered the first virtue of the family to ensure the reproduction of a just society. Where does this leave the role of the good in the family?

¹⁰⁴ It is beyond the scope of this thesis to provide an in-depth sociological investigation to support this claim. For future research after this thesis, I aim to bolster this argument with social scientific evidence.

As persons are both citizens and members of associations, Rawls has to mediate a balance between the requirements the state can impose and the space that citizens have to develop a meaningful life. It is in the interest of the latter that Rawls insists that both the principles of justice should not be directly applied to associations. If there was direct application, there would be an imbalance between securing citizens' freedom of conscience and freedom of association. Therefore, family values cannot contradict the principles of justice, but the first principle of justice does not prescribe a comprehensive good as citizens can choose how to give meaning to their lives within the boundary of the right. Thus, the right does not regulate all aspects or content of the good within citizens' lives (Benton 2022b).

Barbara Walsh in 'Private and Public Dilemmas: Rawls on the Family' (2012, 426) argues that Rawls acknowledges "the political and comprehensive as porous", which offers women protection in the non-public sphere as opposed to the other feminist arguments mentioned previously. Walsh claims that these dichotomies of the public and private spheres and the reasonable and rational moral powers of persons are not separate notions, they work together to inform one another (*ibid.*). Individuals insofar as they are citizens exercise their sense of justice, whereas individuals exercise their sense of the good, while living according to their moral doctrines and carrying out their rational plans of life.

As Walsh (*ibid.*, 428) notes of Rawls, individuals are not purely reasonable or rational persons, these are two aspects of themselves; they must be integrated, if not, it would suggest, in what I term, a split moral personality. Walsh's reading of Rawls reaffirms my interpretation that the right restricts the good, when she states, the "reasonable constrains the rational, and citizenship constrains personhood" (*ibid.*). Walsh claims that Rawls's position is clear, justice must be promoted in the family (*ibid.*, 433–435). She does not claim that it must take priority as the first virtue. I claim that justice must be the first virtue because the political values of the first principle set the necessary conditions for non-voluntary institutions and voluntary associations for there to be congruence between the right and the good, the public and non-public spheres, and the moral powers of individuals. Since all these features dissolve into one another, the fusion of all three relies on this 'spillover' of a shared set of political values.

A counterargument¹⁰⁵ to my position of justice as the first virtue of the family could be to claim that there are different domains of shared activity in a Rawlsian society, and these different domains of shared activity have a range of virtues and the order of those virtues depends on the particular shared activity and the system of which it is a part. In response to this, I agree that there is a range of virtues that different associations have, however, having justice as the overarching virtue is paramount to the coherence between the right and the good. Rawls acknowledges the right and the good must complement one another. This complementary relation is achieved via the priority of the right. Allow me to further illustrate this point with the discussion of education described in *Justice as Fairness: A Restatement*.

II Educational institutions

The institution of education plays a significant role in the second stage of moral psychological development of children, the stage of morality of association (Rawls 2001, 163). When children interact with persons outside of their home life, they learn certain character traits relevant to their different roles in associations. I consider educational institutions as core institutions for this development since one of the first associational roles children have is to be a classmate, a friend, and a teammate to their peers. In these roles, children learn how to cooperate in different roles with their various rules of engagement. Over time, children, through displays of affection and respect from their parents, learn and display trust and respect for their parents. The feelings of trust and care motivate children to respect and follow the household rules. It is through a child's commitment to these rules that they learn to view themselves as an equal cooperating member of an association.

In addition to the above role of education, the institution of education contains features of a non-voluntary institution. Education for children is non-voluntary; parents cannot choose to withdraw their children from the education system. Like the family, educational institutions help to develop a child's capacity for citizenship, thus enabling them to be self-supporting citizens. This suggests that children develop the means, skills, knowledge, insight, and virtues required for making a living and sustaining one's life. Moreover, by the use of the term self-supporting, Rawls is suggesting that introducing and educating children in line with their rights and constitutional knowledge is necessary so that they know that they have the freedom to exist in or withdraw as a member from any voluntary association that they no longer align

¹⁰⁵ I am thankful for David Reidy for this discussion.

with. In this way, the role of education is to help ensure that individuals remain members of associations out of freedom and not fear. Rawls acknowledges this role of education in *Justice as Fairness: A Restatement* when he affirms,

“Their education should also prepare them to be fully cooperating members of society and enable them to be self-supporting; it should also encourage the political virtues so that they want to honour the fair terms of social cooperation in their relations with the rest of society” (Rawls 2001, 156).

Given this, educational institutions are required to teach children their basic liberties, and political virtues such as equality, tolerance, solidarity etc. Due to this, educational institutions are key institutions for children to develop their sense of justice since they learn and practice reciprocity. Meanwhile, these capacities and values are essential for children to learn and to become just citizens, thus, no parent can choose to withdraw their child from the education system.

This raises the issue of parents wishing to withdraw their children from schools that teach political values on grounds that these values undermine their children’s ability to participate in their relevant comprehensive doctrine. For instance, in the case of *Wisconsin versus Yoder*¹⁰⁶, where Amish parents wanted to have their children pulled out of the education system for this reason. Rawls himself acknowledges that supporters of comprehensive doctrines that wish to isolate themselves or their children from education and other aspects of civic democratic life are problematic as they do not develop nor exercise reciprocity since they have not developed their sense of justice. A sense of justice is necessary to build trust and cooperate relations with individuals outside of their association, thus the foundation for civic friendship.

In the specific case of the Amish, Macedo (1995, 472) notes that such a small group does not pose a threat to the stability and reproduction of justice, however, larger groups such as Christian and Protestant fundamentalists do pose serious risks to the stability of the system. We will return to the discussion of demanding to withdraw children from education systems based only on the reasoning of comprehensive doctrines. For now, it is pertinent to illustrate,

¹⁰⁶ *Wisconsin v. Yoder*, 406 U.S. 205 (1971).

in my interpretation of Rawls, that the content of the right must be prioritised in the education system as it was in the case of the family.

Over and above parents not being able to withdraw their children from educational institutions altogether, parents cannot request that their children remain in these institutions yet not be taught about the political values. This exclusion from the democratic curriculum would undermine the child's capacity to develop a sense of justice. Allow an example to illustrate this point. The case of Mozart versus Hawkins in the United States,¹⁰⁷ where Robert Mozart insisted that his children should not be taught the book entitled *Jim Cooks*, for religious reasons. The reason was that he did not want his male child to learn that men can cook, as he feared that this would undermine his religious doctrines' teaching on gender inequality between men and women. If we analyse this case from a Rawlsian framework, Mozart would not be able to object to this book being taught to his male child, since the book is teaching a core political value, namely gender equality.¹⁰⁸

Considering that liberty, equality, and equality of opportunity (in terms of a social minimum and open society) are essential to the reproduction of justice, we can infer how Rawls would want these political values to take priority here, from his application of the content of the right to the family. I suggest that the right regulates the institution of education as it would the family, insofar as the education system cannot tolerate instances where the liberty and equality of its members are not acknowledged.¹⁰⁹ Thus, I claim that justice is the first virtue

¹⁰⁷ *Mozert v. Hawkins County Bd. of Education*, 827 F.2d 1058 (6th Cir. 1987).

¹⁰⁸ There is a large body of scholarship in liberal theory particularly in regard to the boundaries of education in liberal societies. There is no clear consensus on this issue, see the following sources for discussion: Gutmann, A. 1987. *Democratic Education*. Princeton, N.J: Princeton University Press; Macedo, S. 1995. 'Liberal Civic Education and Religious Fundamentalism: The Case of God v. John Rawls?', *Ethics*, 105, 3, pp. 468–496; Eisgruber, C.L. 2002. 'How Do Liberal Democracies Teach Values?', in S. Macedo and Y. Tamir (eds) *Moral and Political Education*. New York University Press, pp. 58–86; Blitz, M. 2004. 'Liberal Education and Liberalism', *The Good Society*, 13, 3, pp. 45–48; Cohen-Almagor, R. 2021. 'Can group rights justify the denial of education to children? The Amish in the United States as a case study', *SN Social Sciences*, 1, 164.

¹⁰⁹ In terms of education, I have only referred to it in terms of schooling. Education extends beyond formal education systems insofar as "most political scientists who write about education subsume it under the concept of political socialisation. Political socialisation is typically understood to include the processes by which democratic societies transmit political values, attitudes, and modes of behaviour to citizens." (Gutmann 1987, 15). It is beyond the scope of this thesis to provide a comprehensive discussion of education and liberalism. For

of the institution of education, by this I mean that the political values have to be upheld within these institutions. If the content of the right has to be taught, is it possible for a Rawlsian society to accommodate religious schools?

Education, similar to the family, also has features of voluntary associations. Schools and universities are voluntary associations that can be constructed to exemplify the values of a comprehensive doctrine through its activities and practices. Rawls states that these institutions sharing final ends is not out of place (Rawls 2005, 464). In other words, a Rawlsian society could accommodate a Protestant, Catholic, and secular school. However, the categorical requirement of the indirect application of justice to education stipulates that the values of justice must be taught, and internalised in the background culture of justice as fairness. Therefore, a Protestant, Catholic, and secular school would have to incorporate the political values into their curriculum to safeguard the development of children's capacity for citizenship. Justice as the first virtue of education does not prevent these religious or secular schools from teaching their own comprehensive values such as God is the source of moral authority, but at the same time, they would have to ensure that their tenets are restructured so as not to conflict with the content of justice and, thus, promote the equality and liberty of persons (Rawls 2005, 460–461). For example, a religious university cannot allow only male students and not females, as this would impact equality of opportunity, which is a demand for justice in all educational institutions (Rawls 2001, 11).

The family and education occupy integral places within a Rawlsian society as they both are non-voluntary associations (to the degree that they are necessary for the cultivation of citizenship) and partially voluntary (insofar as they can incorporate comprehensive notions of the good). In contrast to the family and educational institutions, 'fully voluntary' refers to associations where members can choose to leave them at any time without fear, if they no longer agree with the religious, metaphysical, and philosophical doctrines embodied in these voluntary associations via practices, rituals, meetings, and activities. Even though they are purely voluntary, they are still associations where citizens learn to socialise, thus form part of the background culture of society. Thus, I claim they too are bound by the constraint of the right. It is this argument that I turn to next.

a comprehensive discussion refer to Gutmann, A. 1987. *Democratic Education*. Princeton, N.J: Princeton University Press.

III Voluntary associations

In *Justice as Fairness: A Restatement* (2001, 10), Rawls claims:

“Firms and labour unions, churches, universities, and the family are bound by constraints arising from the principles of justice, but these constraints arise indirectly from just background institutions within which associations and groups exist, and by which the conduct of their members is restricted”.

This requirement for the principles of justice to regulate firms, labour unions, and churches is the same parameter Rawls insisted on in the family, discussed above. Thus, this above regulation he describes is not a directive for non-voluntary institutions only, or in other words, institutions that form part of the basic structure of society. Rather, this quote demonstrates that Rawls extends the constraint of the right to all institutions even if they are voluntary. That is to say, even those in the background culture of society.

It is this boundary of the right that delineates the reasonable from unreasonable comprehensive doctrines. The latter are those that are not congruent with the content of the right, while the former are those that have found parallels between justice as fairness and their comprehensive view and, thus, can accept the principles of justice as an overlapping consensus and not a *modus vivendi* (Rawls 2005, 489). For instance, if comprehensive doctrines have incompatible values such as child sacrifice, then these doctrines do conflict with the political values and, as such, would contradict the primacy of the right, even if these doctrines are not prescribing or relying on their values for justification of political actions. This would then require those doctrines to be realigned with the values of justice or be regarded as unreasonable comprehensive doctrines.

In contrast, Rawls considers Catholicism to be a reasonable comprehensive doctrine. It adheres to the requirements of reasonable comprehensive doctrines. Catholicism exercises both theoretical and practical reason in that it is a comprehensive moral value system that prescribes values of the good life. Moreover, it is a comprehensive doctrine that has adapted to political changes in history (Freeman 2010, 350). A recent example is Pope Francis allowing women to head certain Vatican offices, serve at alters, be distributors of communion, and give readings from the Bible during mass (Pullella 2021 & Powers 2022). Yet currently, Catholicism does not recognise the right for women to be ordained; those that

have been ordained, have been excommunicated (Bertelsmann 2019). I claim that Rawls acknowledges the need for voluntary organisations such as Catholicism to internalise the basic liberties and equalities of the first principle and equal opportunity of the second principle. The fact that Catholicism as a doctrine and the forms of associational life it supports have been altered to cohere with the political changes in history (i.e., liberal values) make the doctrine reasonable. Yet one must ask if these liberalising changes are sufficient to help Catholicism cohere with the right, which I discuss below.

The tradition of the subjugation of women in Catholicism is justified by the appeal to the moral truth claim of Catholicism, namely the metaphysical inequality between women and men. We need to ask: Should it be unjust for reasonable comprehensive moral doctrines to uphold moral truth claims that may result in the suppression of a group of persons in the internal running of their institution? I argue that it is not just, as this feature undermines the freedom, equality, and equal opportunity of its members as citizens of justice as fairness. Allow me to clarify.

Rawls acknowledges that comprehensive doctrines for persons are vital for their self-expression and the basis of their rational plan of life. Citizens learn how to be just via the three stages of moral development, two of which I have previously discussed. The third stage, the morality of principles, is tied to citizens' participation in associations. Individuals learn to support the structure and rules of associations when they receive mutual recognition, love, and care from fellow members. When receiving this, they see how being part of an association benefits them, and this instils in them a desire to perform their role and responsibilities within an organisation (Rawls 1999a, 429). Thus, a citizen's sense of justice is developed across various voluntary and involuntary associations, such as the family, institutions of education, and religious, metaphysical, or philosophical associations to which citizens belong. With this in mind, returning to the example of Catholicism, I claim that not allowing women to be ordained causes a moral tension between the political values that regulate the boundaries of the doctrines and the moral values that regulate the content of a comprehensive doctrine.

As shown earlier, Catholicism, for Rawls, is reasonable due to its liberalising changes, but I claim that it needs continued changes to ensure that the first principle of justice and the sentiment of equal opportunity is adhered to. The institution of the Catholic Church needs to ensure equality for Catholic women. This could be achieved by opening up the positions of

the Church to all members and not those of a specific gender. This helps to align the public and non-public spheres with the understanding that a fair society is one where economic positions are open to all. If the Catholic Church is to deny women the ability to occupy certain positions within the church due to the claim that these positions are restricted based on the metaphysical justification as being ordained by God, then I claim that this is at odds with the political values of justice. In a fair society, all women are entitled to the same opportunity to occupy an economic position. All economic positions in justice as fairness are subject to labour regulations. Denying a person from holding an economic position due to their gender, race, class etc., would not align with a Rawlsian fair society (Benton 2022b).

Thus, an argument could be made for further intervention, and congruence between the constraint of the right and the ideals of the good. Based on how Rawls approaches the family, discussed previously, one could extend the logic of his argument to analyse how questions of congruence between the right and the good could be addressed in the background culture. In the case of the family and education, citizens do not cease being citizens when engaging in these institutions. Rawls contends that individuals should have their liberty and equality safeguarded insofar as they are citizens no matter the sphere in which they interact within. With this in mind, citizens do not cease to be citizens when they are members of a comprehensive doctrine, they remain citizens first and foremost. Rawls reiterates this priority in *Political Liberalism* (2005, 469) when he states:

“Although the principles of justice do not apply directly to the internal life of churches, they do protect the rights and liberties of their members by the constraints to which all churches and associations are subject”.

If citizens are taught how to be just via voluntary institutions that are in tension with political values, it could impact their development of citizenship. In the first two fundamental stages of moral development (morality or authority and morality of association), individuals learn mutual cooperation through the development of feelings of care and love that they receive within their family or associational life.

Say a female child grows up in a family where family life is modelled on the comprehensive doctrine of Catholicism, she attends a Catholic school (where civic values are not incorporated into the curriculum), and in her associational life she attends mass and learns Catechism. She may not develop the same self-respect as her fellow male peers or family

members, as she is not granted the same equal respect as her male peers due to not being seen as metaphysically equal. She witnessed the teachership hierarchy, and the different roles that females and males have in the family and within the association. If she reflects on her inferior position, she may not develop reciprocity or affection ties, as she may not develop feelings of trust for her fellow members as females are not granted the same respect and metaphysical equality as fellow male members. If the female child does not develop the necessary ties of friendship, this could lead to Catholic women having an incomplete or underdeveloped sense of justice. Citizens that do not have the necessary capacity for a sense of justice undermines the ability for the values of justice to be reproduced over time, thus resulting in long-run political instability. I claim that similar to the family and education, in all comprehensive moral doctrines justice must be the first virtue. I argue that it should be given priority in comprehensive moral doctrines, as doctrines cannot enforce values for their members that undermine the principles of justice and political values (Benton 2022c).

This is essential, as discussed in the family the moral powers of persons must work in unity with one another; if the content of the right does not constrain the good then there will be a disconnect between the moral personality of individuals. Creating this synthesis between the reasonable and the rational capacities of individuals will help to support the stability of the state as citizens will be able to incorporate the content of justice with their comprehensive doctrines. This provides the foundational support for an overlapping consensus. An overlapping consensus requires agreement on constitutional essentials and if citizens cannot guarantee support for the political values of the constitutional essentials then there is no way for an overlapping consensus to be possible.

One could question, as Rosenblum does (as shown earlier), imposing the right as regulation for comprehensive doctrines to reform these doctrines could undermine liberty and freedom of association. I suggest it does not. The parameter of the right does not prescribe comprehensive conceptions of the good. Thus, this leaves room for citizens to construct meaning and value in their lives as they see fit, as shown in the previous chapter with the alternative views of marriage that can be accommodated. Although some fundamentalist groups may feel marginalised by this requirement, this should not be seen as an injustice, but rather a just demand directed towards unreasonable comprehensive doctrines.¹¹⁰ No society

¹¹⁰ There is no consensus on the place of unreasonable place and the restricts the Rawlsian state can and should impose. See: 'John Rawls and the Political Coercion of Unreasonable People', in Friedman, M. 2003.

can account for all forms of life; justice as fairness cannot accommodate, tolerate, or harbour all comprehensive doctrines. The coexistence of as many comprehensive doctrines as possible in line with the constraint of justice is the best we can hope for in a Rawlsian society. According to justice as fairness, those groups that do not revise their views in light of the priority of the right will eventually be excluded or not be able to gain proponents for these views. Therefore, for Rawls, freedom of association does not mean freedom to associate in line with values that contradict the political values of justice. Thus, for Rawls, citizens right to dissociate must be justified in line with the political values of justice.

However, justice as the first virtue of comprehensive doctrines does pose a heavy burden on citizens' conception of the good. I claim that citizens belonging to certain comprehensive doctrines will lose control of specific aspects of their doctrine, those aspects that contradict the values of justice. If some religions are forced to lose the metaphysical values that unnecessarily restrict or oppress certain subgroups within those religious communities, the members of said doctrine, on the one hand, lose their right to act in their association how they see fit. On the other hand, in changing the culture of their moral community many persons may be inclined to reflect on the moral truth claims of their doctrines and regard this transformation as a dilution of their moral truth claims. If the leaders of these organisations think that the reshaping of their doctrine does not align with the tradition of the doctrine itself or it changes the culture of the organisation to the extent that the tenets of the tradition have to be reformulated, then this may lead to civil unrest, due to the tension between the moral truth of the unreasonable comprehensive doctrines and the primacy of the political ideals of the good in the constraint of the right.

Even if civil unrest is a possibility, prescribing political values as the overriding values as the constraint for the internal running of associational life is necessary, as persons are citizens before they are members of any association and insofar as they are beneficiaries of justice, they too need to uphold the values of justice. Upholding the values directly only in the political sphere of society and not upholding them in voluntary associations could lead to the

Autonomy, Gender, Politics. Oxford: Oxford University Press; 'Unreasonable Citizens', in Quong, J. 2010. *Liberalism without Perfectionism*, New York, New York: Oxford University Press. My argument in this chapter is closer to Friedman's than Quong's interpretation.

occurrence of illiberal values in voluntary associations that are at odds with the content of justice, as I demonstrate in Chapter 4.

One could counter this argument by claiming that since Catholicism is a voluntary association, citizens have the freedom to take part in it or not.¹¹¹ If women within the Catholic Church find inequality between the sexes unreasonable, they do not have to take part in the institution, just as they do not have to fear leaving the institution, since it is not a crime to withdraw from associations. In this sense, it is a misfortune that Catholicism does not uphold gender equality, but this is not an injustice. In opposition to this, I argue that since every association is a training ground for one's capacity for a sense of justice, women's self-worth (insofar as they are 'children' growing up in this association) can be negatively impacted before they gain the ability to critically reflect on the association itself. If women (in this example) are unable to develop self-worth or see themselves as equal members of an association, they may not be able to view themselves as equal members of society in general. Likewise, if men view women as being inferior and unable to hold certain positions within their association, they will not view these women as being entitled to the same respect and equality within their associations. Correspondingly, these men will view the women within their associations and women from other associations as inferior citizens in general and, thus, not entitled to the same liberties and equalities they desire for themselves.

Thus, I argue when Rawls suggests an indirect application of the right to the internal running of associations, he is insisting on safeguarding the political values by making sure these associations reframe their organisations so that their good coheres with the content of the right. For the example above, this revision would imply that Catholicism as a doctrine would have to be revised to allow women to hold any position within the church. This revision solidifies the complementary nature of the right and the good since within Catholicism the good has been revised to view its members as equal and entitled to the same opportunities. Yet this revision does not undermine or erode all aspects of the good. Catholicism can still determine how its members view the afterlife, their personal virtues, and personal moral codes, so long as the content of all respect (or does not conflict with) the content of the right. Thus, I claim justice is the first virtue of not only institutions of the basic structure but also voluntary associations, as these two spheres of interaction are dependent on one another to

¹¹¹ I am thankful to Darrel Moellendorf for this discussion.

help realise the demands of justice. Given this, in the next section, I unpack how and why the role and content of justice is an overarching good that both the basic structure and the background culture share.

3.5 Justice as the collective good

A key feature for the continuance of Rawlsian society is stability. Stability can only be achieved if justice as fairness, using Rawlsian terminology, ‘generates its own support’ (Rawls 2001, 186). Allowing citizens to have a free and flourishing internal life, where the internal running of their comprehensive conception of the good is not regulated by state interference, will help citizens adhere to and internalise the principles of justice themselves. Initially as explained earlier, Rawls develops a freestanding account of justice; citizens uphold this account of justice as the political values such as “equal political and civil liberty, fair equality of opportunity, economic reciprocity as well as the social aspects of citizens self-respect ... fairmindedness and reasonableness” (ibid., 190) help to foster citizens’ individual expression of the good.

Rawls acknowledges this in *A Theory of Justice* (1999, 499/436) “The most stable conception of justice, therefore, is one that is perspicuous to our reason, congruent with our good, and rooted not in abnegation but in affirmation of the self”. Although this is the early Rawls, the later and the earlier Rawls share the necessity for congruence between the right and the good. The difference is that the later Rawls insists this congruence is between a purely political and not a comprehensive doctrine as he suggested in *A Theory of Justice* (1999).

The congruence between the right and the good remained essential to Rawls; only if there is coherence between the right and the good can citizens’ motivations for adopting principles of justice merge with the citizen’s individual comprehensive conceptions of the good. Rawls states that “it is left to citizens individually as part of their liberty of conscience to settle how they think the great values of the political domain are related to the other values they accept” (Rawls 2001, 190). He argues that the more citizens see and appreciate the freedoms that they gain in their associations, the more they will come to appreciate and be willing to be loyal to the requirements of justice over time (ibid., 194). In addition, over time, citizens would be

less likely to dominate the political sphere and enforce their conception of the good once they acknowledge the benefit of political virtues such as the duty of civility.¹¹²

Rawls ensures adequate space for citizens to develop meaning in their life as they see fit since they have the freedom to choose their own voluntary associations. This moral freedom I claim has instrumental and intrinsic value for Rawls. It has instrumental worth, on the one hand, as social unity relies on citizens' adherence to the principles of justice. Citizens find value in upholding the principles only, inasmuch as the content of justice helps to foster a stable society in which persons' competing rational plans of life can be realised.

On the other hand, encouraging the free and flourishing internal life of citizens with as few boundaries as possible is an intrinsic good. Rawls gives citizens the freedom to pursue their moral doctrines, which is good for its own sake since the role of political society is to create sufficient space for citizens to freely pursue their moral doctrines. The fact that citizens "are moved by reasons of their good to do what justice requires" (Rawls 2001, 202) encapsulates the congruence between the right and the good Rawls develops. This congruence depends on the good being the focus of the internal running of associations, while the right is prioritised in that it sets the boundaries for the good to flourish within.

If citizens' loyalty to principles of justice increases over time, this helps to reinforce and secure a stable society insofar as it helps promote social unity between persons holding competing conceptions of the good. This is the best and most stable society a Rawlsian could hope for given the burdens of judgements and reasonable pluralism. In this manner, justice is seen to have instrumental value since political society helps citizens to fulfil their own rational plans of life and helps realise their moral, philosophical, religious, or metaphysical ideals (Rawls 2005, 201). In this way, justice arises out of the need to mediate the tension between conflicting ideas of the good in political society. This is not to suggest that justice is an instrument of the good itself, but rather that justice is the realisation of a non-comprehensive good for Rawls. Given this, the good of political society rests on its ability to

¹¹² As a reminder of the kind of political values Rawls accepts, in *Political Liberalism* (2005, 453) he states: "Examples of political values include those mentioned in the preamble to the United States Constitution: a more perfect union, justice, domestic tranquillity, the common defence, the general welfare and the blessings of liberty for ourselves and our posterity. These include under them other values: so, for example, under justice, we also have equal basic liberties, equality of opportunity, ideals concerning the distribution of income and taxation, and much else."

help actualise citizens' freedoms to pursue their own moral doctrines. Due to this, citizens then see political society and justice as a shared non-comprehensive end that encourages and facilitates their individual goods.

Justice as the first virtue of all associations is necessary, as developing one's sense of justice is worthwhile as living in a just society is for the benefit of all. Justice is a joint activity insofar as a just society cannot be achieved if only a handful of persons act justly. Thus, it is also an individual activity since each citizen must be motivated to act in accordance with the laws of society to individually help bring about a just society for all. Achieving a just society is not an individual good, but rather a collective good that benefits all individuals. Rawls illustrates this understanding of justice as a collective good with his metaphor of society as a 'social union of social unions'. Rawls held on to this collective understanding of justice from Section 79 in *A Theory of Justice* (1999, 456–463) to Section 60 in *Justice as Fairness: A Restatement* (2001, 198–202). In *A Theory of Justice* (1999, 456–458), Rawls used the imagery of an orchestra to illustrate that without each member individually contributing their part to the musical development, the collective outcome (orchestra) would not exist. Thinkers such as Baldwin (2008, 265), argue that this orchestra imagery invokes communitarian reasoning.

I disagree, as the later Rawls insists that his theory of justice as fairness abandons the idea of community whereby citizens are united under one collective moral truth claim, in other words, share one comprehensive doctrine. Due to Rawls's presupposition of reasonable pluralism and the burdens of judgement, he claims that the basic structure of society is not and cannot be united on one comprehensive doctrine, thus, to mediate this moral plurality, he develops a freestanding account of justice. Thus, justice as a good is the collective outcome and aim arrived at by individuals who acknowledge and promote the constraint of the right so that they can live in a society in which their multiple ideas of the good can flourish equally. This is not to suggest a community is not achieved, it is not a moral community founded on a comprehensive doctrine, but it is a community of justice united by a shared set of political values (Rawls 2001, 198–202).

An implication of 'justice being the first virtue of all social institutions', is that civil society in justice as fairness needs to be democratised. Rawls's discussion of the family and his call for fair distribution of labour within the family to be recognised and compensated for in the economic system of a just society, highlights the need for rectifying social injustices by

curtailing the good with the right. That is to say, promoting liberty and equality as primary values in all associations and institutions.

Feminist critiques¹¹³ highlighted the problematic division of the public and non-public divide since this divide did not adequately account for addressing the social injustices that could occur to marginalised citizens in the non-public sphere if the principles of justice did not have application here. As discussed previously, Rawls (2001, 166), in response to Okin and like-minded academics, states “If the so-called private sphere is a space alleged to be exempt from justice, then there is no such thing.” Thus, there is no sphere in which citizens will not have their liberties and equalities secured. It is pertinent here to reiterate the point that the public and non-public divide is not a stark contrast but instead a blurred line whereby associations and institutions often dissolve into both spheres. It is beyond the scope of this thesis to develop a comprehensive analysis to assess at which point individual associations and institutions are purely public or non-public. Rather, I wish to highlight that this division is fluid and that the values in one sphere can help support (or undermine) the values in the other sphere.

The family is an intimate association that carries out a core political function, the reproduction of citizens and their moral development, which is an essential foundation for citizens’ self-respect. Similarly, educational institutions are semi-political and semi-social. Political insofar as they are a key institution of the morality of association, yet social in that they are informed by citizen’s moral values (e.g., religious schools). Even labour unions, religious institutions, social clubs, and voluntary groups straddle this blurred line between the public and the non-public sphere since they can have social, political, civic, and economic purposes and influences. The example of the Jaycees is significant as it is a private voluntary association that has economic implications for its members or the lack of full membership for the female members. The Jaycees illustrate this blending of public and non-public spheres. If the division between the public and non-public sphere and the associations and institutions

¹¹³ See these two foundational texts on highlighting this problematic division in liberal theory: ‘Justice from Sphere to Sphere: Challenging the Public/Domestic Dichotomy’ in Okin, S.M. 1989. *Justice, Gender and the Family*. New York: Basic Books Inc & ‘Feminist Critiques of the Public/Private Divide’ in Pateman, C. 2003. *The Disorder of Women: Democracy, Feminism and Political Theory*. Cambridge: Polity Press.

within is indistinct then the ‘spillover’ of (or lack thereof) values and membership treatment may be more difficult to determine than it initially appears.

It is beyond the scope of this thesis to provide detailed sociological evidence to substantiate or refute the claim that the divide between public-compelled associations and private voluntary associations is vague. A comprehensive sociological investigation to substantiate this claim could help to strengthen the claim for congruence between the right and the good. In other words, congruence between political norms and values of all associations in society (from intimate, personal, voluntary, economic etc.) is necessary due to the increased likelihood of ‘spillover’ of values and membership treatment. In Chapter 4, I discuss sociological evidence that shows that there may be a lack of congruence between the right and the good in current liberal democracies such as the United States.

In opposition to my view, Rosenblum, as explained earlier, disagrees with my argument for strict congruence between the right and the good insofar as I claim that voluntary associations must liberalise themselves. Additionally, she provides an alternative reading of Rawls that does not support my reading of congruence being necessary. Rosenblum (2018, 55) states: “Except for serfdom and slavery Rawls does not identify arrangements that must be prohibited as a condition for the morality of association”.

Briefly returning to the three stages of moral development for Rawls, stage two, the morality of association, is essential for citizens to develop bonds of attachment to one another within their associations. For Rawls, a just society hinges on the development of reciprocity between citizens as members of associations. The morality of association then paves the way for the development of reciprocity via ties of civic friendship between fellow citizens who share no associational bond but share a commitment to the principles of justice. Hence, at each stage of moral development citizens increase their ability and desire to cooperate and adhere to the requirements of justice. Citizens learn to participate in political society insofar as they exercise and benefit from fellow citizens’ reciprocity in the non-public sphere. Therefore, the political dispositions of reciprocity and mutual cooperation are essential in order for citizens to conform to the principles of justice, and their requirements in the non-public sphere.

Although Rawls may have only given serfdom and slavery as two clear-cut examples that violate the civic liberties of citizens, it is not a far reach to suggest that racist or sexist social institutions too would be prohibited since institutions such as these would violate the civic

liberties and equal status of women, black, coloured, Indian, and Asian persons.¹¹⁴ Rawls himself acknowledges (Rawls 2005, 152) “controversial issues inevitably remain, for example, how more exactly to draw the boundaries of the basic liberties when they conflict (where to set ‘the wall between church and state’)”. I have emphasised some extracts from Rawls’s later works to illustrate where I think this link between church and state would be placed. Extracts such as:

“Political principles do not apply directly to its internal life, but they do impose essential constraints on the family as an institution and so guarantee the basic rights and liberties, and the freedom and opportunities, of all its members” (Rawls 2005, 469).

Extracts such as this stress the indirect prohibitions for associations, whether they are public institutions or private associations, that the political values of liberty and equality must be categorically upheld across society, to ensure a fair society. I claim that if associations and institutions do not cohere with the right and help to foster political values then they undermine the complementary nature of the right and the good in justice as fairness and may undermine the stability as such, as illustrated by the discussion of education and religious institutions in Section 3.3 of this chapter.

As considered previously, later Rawls does not encourage moral pluralism as is but insists that his theory of justice can only account for reasonable moral pluralism. The demarcator of ‘reasonable’ is there to show that not all moral values, partially or fully comprehensive conceptions of the good, can be included. Unreasonable doctrines pose a threat to liberal democratic societies as they can never justify the content of the right from within their own doctrine. Instead, the content of the right for them can only never be upheld as a *modus vivendi*. Unreasonable doctrines can only commit to the principles of justice as a *modus vivendi*, an agreed upon way of life to preserve peace. Unreasonable doctrines and people

¹¹⁴ As discussed in Chapter 1, this connected is not settled, I am closer to Okin here than I am to Nussbaum. Okin (1994, 23–43) suggests that metaphysical assumptions that regard some persons as inferior due to their contingent traits such as gender, would impact their political freedom. In contrast, Nussbaum (2003, 488–520) states that these metaphysical assumptions are acceptable so long as they do not impact on the political freedom in the formal sense (i.e., the right to vote etc.).

may be willing to uphold these political values as the current values, yet waiting for the time to enforce their own comprehensive doctrine on the basic structure (Rawls 2005, 489).

This undermines the stability of justice as fairness as unreasonable doctrines cannot partake in the act of public reason or form part of the overlapping consensus. Just as reasonable comprehensive doctrines mirror the features of reasonable persons examined in Section 3.3, unreasonable persons mirror their unreasonable comprehensive doctrines. If individuals are unable to critically reflect and revise their moral position, then they too hold unrealistic expectations that can never be actualised. For example, persons that require their religious doctrine to control the mechanisms of the state are unrealistic since the priority of the right requires a freestanding view of justice.

Rawls does not use the term unreasonable associations, unreasonable is only used to describe persons and doctrines. However, associations are made up of persons and persons have the capacity to be unreasonable, insofar as they hold unreasonable moral views. If these unreasonable persons form voluntary associations with like-minded unreasonable individuals, then there is a connection between unreasonable values across persons, doctrines, and associations. If unreasonable persons are characterised by the inability to adhere to the constraint of the right, fail to be self-reflective, revise, and actively participate in public reason, then these traits could mark the identity of unreasonable associations. Rawls notes that, over time, adherence to unreasonable comprehensive doctrines (or, in this case, unreasonable associations) will become less appealing. More importantly, unreasonable associations may revise their position and become reasonable.

For example, the St Andrews Society is a voluntary association, with assemblages across the world. It is regarded as a non-profit and charitable organisation that promotes and preserves the Scottish heritage and tradition of its members. Membership is restricted to Scottish-born or those of Scottish descent and originally comprised only male members. The St Andrew's Society of Winnipeg opened membership to women in 2004 after 145 years of its establishment and welcomed its first female president in 2022, Evelyn Mitchell (Winnipeg Sun, 2022). This example shows that this voluntary organisation has, over time, revised their moral values to align the association with the political values of liberal society such as liberty, equality, and equal opportunity. This movement of unreasonable doctrines becoming reasonable is connected to the liberalising of doctrines, since a reasonable doctrine can adhere

to the content of justice and not allow the conception of the good to supersede the political values of justice, as Rawls affirms below:

“In a reasonable comprehensive doctrine, in particular a religious one, the ranking of values may not be what we might expect. Thus, suppose we call transcendent such values as salvation and eternal life—the Visio Dei. This value, let’s say, is higher, or superior to, the reasonable political values of a constitutional democratic society. These are worldly values and therefore on a different, and as it were lower, plane than those transcendent values. It doesn’t follow, however, that these lower yet reasonable values are overridden by the transcendent values of the religious doctrine. In fact, a reasonable comprehensive doctrine is one in which they are not overridden; it is the unreasonable doctrines in which reasonable political values are overridden. This is a consequence of the idea of the politically reasonable as set out in political liberalism” (Rawls 2005, 483–484).

Thus, I argue just as the moral powers of persons inform one another, my interpretation of the later Rawls makes an argument that his revisions acknowledge the feminist concern that the personal is political.¹¹⁵ Just like it is not clear where the public and the private divide start and end, one’s moral powers of a sense of justice and sense of the good do not have a clear separation. These forms of reasoning may be amplified or submerged in different social and political roles, but they are inherently fused. This relation mirrors that of the right and the good. The right and the good must be complementary, and the comprehensive doctrines of the good must be in harmony with the rules of moral obligation. Without this harmony, the priority of the right has no prescriptive moral force. It is now pertinent to return to Rosenblum’s argument for why illiberal associations do not necessarily undermine the stability of liberal society.

For Rosenblum (2018, 283) illiberal associations do not inherently hinder the stability of a liberal society. She explains that these groups have a complex relation to the state. A society having a diverse range of associations can help to counterbalance state power. Paramilitary associations can aid in keeping state power within limits especially aspects of government

¹¹⁵ Here I am referring to pivotal revisions of his theory seen in Section 50 ‘The Family as a Basic Institution’ in *Justice as Fairness: A Restatement* (2001) and the Part IV ‘The Idea of Public Reason Revisited’ in *Political Liberalism* (2005).

coercion since they offer political resistance (ibid., 286). Yet the anti-government sentiment and political nature of these voluntary associations do pose a risk for liberal democracy in that “citizen militias pronounce grievances, exaggerate danger, mobilise resentment, and name enemies but offer no positive programmes or institutional designs” (ibid., 287). Rosenblum states that mistrust is a democratic virtue and that these kinds of voluntary associations do well at exercising it, but she acknowledges that, at the same time, there is a thin line between the exercise of this virtue and excessive supported distrust that can result in instability for liberal democracies (ibid., 288).

While these groups do pose a threat to liberal state stability, they offer a sense of belonging and communal life for their members. These members are often marginalised and are not able to find a sense of community in other areas of liberal society. Thus, the authoritarian structures of some of these groups offer their members a sense of belonging that they do not get from other aspects of society. Since paramilitary associations offer a sense of communal life for these citizens, they help to build cooperation, reciprocity, and discipline between members. Thus, if these groups can foster reciprocity and the need for cooperation among members then these associations are beneficial for cultivating moral development. But, often, minority groups are threatened by these groups, as Rosenblum notes, as they are faced with violent attacks on their self-worth from these private associations such as the case of the Ku Klux Klan (ibid., 296). From this brief overview, one can see that Rosenblum highlights the complexity of illiberal associations, inasmuch as they provide both membership benefits and risks to liberal society. Although paramilitary and other illiberal doctrines may provide their marginalised members with the necessary community foundation to help aid their moral development, the damage they can cause to minority groups in the name of protecting political sovereignty is a great destabiliser of liberal society as it disregards the core values of liberty and equality.

Another threat to the core values of liberty, equality and equal opportunity are voluntary associations that choose not to provide members equal status within their association. I argue that reciprocity and cooperation may not be fostered in all members of voluntary associations that have chosen not to provide equal status to all its members. Let us return to the example of the Catholic Church. Women within the Catholic Church may not acquire the necessary moral dispositions for cooperation and reciprocity and have a defective or incomplete moral development. These dispositions are dependent on members developing a sense of trust and

care for their fellow members and simultaneously receiving trust and care in return.

Individuals that have an unequal status will be excluded from certain positions and functions within the Catholic Church such as having the possibility of being ordained. Not allowing ordination for females may negatively impact the affective ties of some female members.

The association of Roman Catholic Women Priests (RCWP) is evidence of this lack of reciprocity (Bertelsmann, 2019). This is an organisation calling for the equal status of women in the Catholic Church as those currently wanting to be ordained are excommunicated. This example highlights that second-class membership can undermine adherence to the political values of cooperation and reciprocity as it undermines their moral development as equals. One could argue that these women were able to exercise cooperation and reciprocity insofar as they were able to find a common moral goal with which to generate their association around, the RCWP. This may be the case here, but it does not necessarily imply that all citizens who do not receive trust and care will want to, or have the ability to, cooperate in other associations, since they may not have cultivated the dispositions for collaboration, or ties of friendship in associations.

The necessity to form the RCWP could be illustrative of the fact that these female founders did not receive the same respect as their fellow male members. These women witnessed that the Catholic Church, as an association, did not provide them equal moral status as their male peers, as they could only occupy certain roles; this unequal acknowledgement of their self-worth could undermine their full moral development as equal members, and their ability to form civic ties of friendship.

3.6 Conclusion

In summary, the purpose of Chapter 3 is to demonstrate how and why justice should be considered the first virtue of all associations within justice as fairness, according to my interpretation of Rawls. Prior to substantiating this claim, I presented Rosenblum's argument advocating against strict congruence in liberal democracies. She provides sociological evidence for why a 'spillover' of values is not inherent. The dialogical aim of comparing my interpretation of Rawls and the place of associations to Rosenblum's is to present an alternative reading of a dominant interpretation of Rawls.

To substantiate my claim that justice is the first virtue of all social institutions, I began with an overview of the content and requirements of the right. I show that the content of the right cannot depend on a comprehensive account of the good, that only political values can be used for justification in the public domain, and that a Rawlsian society can only account for an overlapping consensus of reasonable comprehensive doctrines. Since public and non-public domains are interconnected, there needs to be a complementary relationship between these spheres. I illustrate this interdependence with the discussion of the family and education as two core non-voluntary associations and Catholicism as an example of a reasonable comprehensive doctrine.

As a core association for the morality of authority, the family is responsible for the initial stages of aiding the development of children's capacity for citizenship. Rawls argues that children who cannot develop relationships of trust and care from their parents, are less likely to, or unable to, participate in a society of mutual cooperation, as they would battle to engage in meaningful reciprocal relationships. Education and voluntary associations (such as Catholicism) further this moral development needed for citizens' sense of justice, namely the morality of associations. Within these voluntary and involuntary associations, individuals learn their relevant expectations and duties to other members of society.

Given that associations are key to the development of citizenship, if these associations are to be structured in such a way that they undermine this development process, this would lead to citizens not being able to develop reciprocal relations and, hence, impact the stability of justice in Rawlsian society. Due to this, I argue that to ensure this stability, justice needs to be considered the first virtue of not only institutions in the basic structure of society, but also all voluntary associations in the background culture. Thus, these voluntary associations need to adhere to the constraint of the right. Rawls does affirm this necessity, (as seen in the quotes from this chapter) with direct mention of liberty, equality, and equality of opportunity as being core political values of the right that have to be respected within these associations insofar as members are first and foremost citizens.

By arguing for justice as the first virtue of all institutions, I suggest that voluntary associations would have to be reshaped to incorporate the above core values of the right. This reshaping does not suggest that the internal running of these associations will be prescribed. Instead, the good, its content, and conditions of its realisation can be diverse so long as the internal running of the doctrine coheres with liberty, equality, and equal opportunity. Justice

as the first virtue of all associations helps to enforce congruence between the right and the good but does not undermine Rawls's position of having a freestanding account of justice. I claim this as the content of the right is still wide in scope and non-comprehensive in that it does not promote one idea of the good from the start. This is necessary to ensure harmony between the moral powers of Rawlsian citizens. I claim without harmony between the reasonable and the rational aspects of the person, citizens may be left with a split moral personality, arising due to the disconnect between the right and the good. Thus, by one viewing justice as the first virtue of all associations it prevents this disconnect by cementing the priority of the right to the good.

Justice as the first virtue encapsulates the idea of justice as fairness being a social union of social unions. Justice is the overarching social union insofar as it is a common non-comprehensive good shared by all citizens. The diverging comprehensive goods of individuals can coexist and flourish in justice as fairness to the degree that they are aligned with the first principle of justice. In the following chapter, I demonstrate how adherence to liberal values in the United States is in decline, which I attribute to the fact that congruence between the political values and associational life has not been established. This congruence is missing as the political values have not been internalised in all the forms of associational life, thus, undermining citizens' commitment to the political values themselves. Thereafter, in Chapter 5, I discuss how this complementary relationship Rawls develops between the right and the good, I argue, is better understood through the notion of a continuum as opposed to the current binary interpretation. It is appropriate now to turn to Chapter 4, to discuss the decline of liberal values.

Chapter 4: The (in)stability of liberal democracies, a Rawlsian review¹¹⁶

4.1 Introduction

In Chapter 3, I discussed the need for the basic structure and the background culture of society to be aligned. This alignment is possible by the constraint of the right that unifies society. In this chapter, my focus is on analysing a current societal-political illustration of the decline of adherence to liberal values in liberal democratic societies, specifically the current political situation in the United States. The purpose of this chapter is to bolster my interpretation of Rawls's theory of justice from the previous chapter. In this chapter I demonstrate that only upholding political values in the public sphere and not in the non-public sphere can undermine the citizens' commitment to liberal values themselves.

To show the applicability of my interpretation of Rawls's theory of justice as a possible remedy to real-life situations facing liberal citizens and the stability of liberal democracies, I unpack one of the challenges facing current liberal democratic societies, namely, the decline of liberal values and the rise of authoritarian, populist, and nationalist sentiments. I argue that an analysis of the social basis of self-respect and the ideal of reciprocity, and specifically, its current violations in the United States, can shed light on one of the failures of liberalism, viz. the underdeveloped moral psychology of citizens. Currently, instability in liberal constitutional democracies such as in the United States points to the inability of liberal society to generate its own support. I argue that this is because the Rawlsian ideal of reciprocity has failed to be realised since citizens have not developed the adequate capacities for citizenship necessary for mutual cooperation.

In my argument, I make reference to Samuel Scheffler¹¹⁷ and Paul Weithman¹¹⁸ both of whom provide a diagnosis of the decline of liberal values in America and the rise of populism

¹¹⁶ Sections 4.5 and 4.7 of this chapter have been presented at the Second Southern African Conference for Artificial Intelligence Research in 2021 and published in their proceedings. See: Benton, P. 2022. 'Why Moral Agreement is Not Enough to Address Algorithmic Structural Bias'. In: Jembere E., Gerber A.J., Viriri S., Pillay A. (eds), Proceedings of the Second Southern African Conference for Artificial Intelligence Research, pp. 608–619.

¹¹⁷ See: Scheffler, S. 2019. The Rawlsian Diagnosis of Donald Trump, *Boston Review*. Available at: <https://www.bostonreview.net/articles/samuel-scheffler-rawlsian-diagnosis-donald-trump/>

¹¹⁸ See: Weithman, P. 2020. 'Comment: Reciprocity and the Rise of Populism'. *Res Publica*, 26, pp. 423–431.

and the implications this has on the Rawlsian ideal of reciprocity. Scheffler (2019) argues that the rise in populism protest movements such as Black Lives Matters, as well as increasing economic inequalities, flag the lack of reciprocity between American citizens. In contrast, Weithman (2020) focuses on the economic inequalities and sociological evidence from Hochschild in *Strangers in Their Own Land: Anger and Mourning on the American Right* (2016) to argue that the ability for Rawlsian reciprocity to be achieved could be challenged by the downward-directed resentment citizens have for those that are benefiting from redistributive economic policies.

In opposition to Weithman, my focus is not on economic reciprocity as being undermined in liberal societies, I look at the social condition of reciprocity as being undermined. As stated in Chapter 2, in my interpretation of Rawls, the condition of reciprocity contains two aspects. The first aspect is social reciprocity, by this I mean the social conditions necessary for reciprocal relations to be achieved. This aspect of reciprocity follows from the moral development of citizens, their cultivation of a sense of justice, and ties of civic friendship that enable citizens to want to engage on terms that are for the mutual benefit of all citizens. The second aspect is economic reciprocity, safeguarded by the second principle of justice, which protects the distribution of goods in a reciprocal manner in line with the conditions of fair equality of opportunity and the difference principle. In this chapter, I focus on demonstrating that the Rawlsian social condition of reciprocity is being undermined.

I argue that Hochschild's sociological research highlights the underdeveloped moral capacities of citizens. I claim that in Hochschild's deep story, her interviewees, 'the angry working-class voters', feel disenfranchised not only because they are economically stagnating while other persons that were previously disadvantaged are now passing them by, but more importantly, their resentment is tied to the fact that certain kinds of people are benefiting from political and economic structures at their expense. In my analysis, I show that this resentment arises because these citizens do not have the adequate capacities for citizenship, in that they are unable to develop affective ties of civic friendship with citizens that do not share their moral views or identity.

I then illustrate how this lack of reciprocity and inequalities in liberal democracies are amplified by digital technologies and, thus, further undermine adherence to liberal values.¹¹⁹ Thus, not only do I demonstrate how Rawlsian political theory can make sense of current societal problems (such as the decline of adherence to liberal values) in liberal democracies, but I also show how application of such theory can mitigate concerns around these problems that are exacerbated by digital technology.

With regards to the decline of liberal values, I argue that the phenomenon of echo chambers further exasperates the distrust some citizens (such as Hochschild's interviewees) have in their fellow citizens and government. Echo chambers, fake news, and political manipulation (e.g., Cambridge Analytica's voter targeting) deepen already existing epistemic divides and further prohibit manipulated citizens (such as voters) from being able to develop affectionate ties of civic friendship with their fellow citizens. In my discussion, I focus on social inequalities that are enhanced by algorithms underlying digital media and social media platforms. I show how historical bias and discrimination can be reinforced via digital technologies if they remain unregulated.

Discussions of ethical concerns around digital technology seldom engage with political philosophy, and here I aim to illustrate the urgent need for such work to be done. One rare example of such work is Binns's 'Algorithmic Accountability and Public Reason' (2007), in which he provides a Rawlsian solution to such problems by suggesting public reason as the gatekeeper of accountability when modelling algorithms. I agree with Binns that public reason offers a solution, however, I argue that societal consensus is not enough to ensure the method of public reason as an adequate purifier of algorithmic outcomes as it is not adequate for legitimising moral values. I stress the need for auditing the implicit moral assumptions and how they are relied on in digital technologies to expose and critically evaluate implicit moral societal assumptions that may be deemed harmful only in a hindsight evaluation of a liberal constitutional democratic society.

Now that I have shown how American liberal democracy in particular is inherently unstable, and the role digital technologies play in amplifying this instability, I then provide my

¹¹⁹ This amplification of inequalities in liberal democracies is of course not unique to the United States, but the United States is home to most of Big Tech and, as such, this example is very relevant to my chosen focus on the current political situation in the United States in this chapter.

interpretation of Rawlsian liberalism as offering a possible solution to liberal instability. I argue that acknowledging Rawls's need for the right and the good to complement one another could help to reinforce reciprocity within liberal society, thus helping liberal society generate its own support. This is because ensuring the congruence between the right and the good requires the liberalising of civil associations for there to be a fusion of the reasonable and the rational aspects of the person. This provides the foundation for which justice is realised through the mutual cooperation of all citizens. Let us begin now by considering the decline of liberalism.

4.2 The instability of liberal democracies

In the twenty-first century, Europe and America are experiencing a general decline in adherence to liberal democratic values. In global political systems around the world, liberalism is being replaced or threatened by authoritarian, populist, and nationalist sentiments. This can be seen in many European countries – e.g., Giorgia Meloni's rise to power in Italy and her agenda of safeguarding traditional families by “not admitting the marriages between people from the same gender” (CBS News 2022). Sweden, Finland, and Denmark have all seen a rise in nationalist politics, where political parties have rallied their campaigns around anti-immigration policies, for instance, Sweden Democrats have attributed their economic issues to Islam (Erlanger and Anderson 2022 & Dougall 2022). In the United States the rise of Trump as president is seen as a climax of American populist views and anti-democratic sentiment, while the 2017 Charlottesville rally¹²⁰ and the anti-Semitic attack of the Tree of Life synagogue in Pittsburgh¹²¹ in 2018 point towards the increase of right-wing extremism in the United States. Whitman (2023, 216) refers to these issues as “the crisis of the modern liberal state”, while Amandine Crespy in Goodman (2018) terms this “a backlash to liberal democracy ... masses of people feel they have not been properly represented in liberal democracy”, as such, current debate in public society is centred on analysing the demise of liberalism.¹²²

¹²⁰ See: *Documenting hate: Charlottesville*. 2021. PBS. Public Broadcasting Service. Available at: <https://www.pbs.org/wgbh/frontline/documentary/documenting-hate-charlottesville/>.

¹²¹ See: *Documenting hate: New American Nazis*. 2020. PBS. Public Broadcasting Service. Available at: <https://www.pbs.org/wgbh/frontline/documentary/documenting-hate-new-american-nazis/>.

¹²² See: McKay, I. 2019. Are We Witnessing the Death of Liberal Democracy?, *The Conversation*. Available at: <https://theconversation.com/are-we-witnessing-the-death-of-liberal-democracy-117085>.

Scheffler (2019) notes the wide varieties of blame stemming from:

“... liberalism’s excessive individualism: Its failure to recognise the importance of national identity or patriotic sentiment, its marginalisation of religion, its devaluation of the nation-state, or its general tendency to privilege the global and universal over the local and particular. Others have suggested that the fault lies with contemporary liberalism’s insufficient individualism: Its creation of huge state bureaucracies exercising control over virtually every area of human life, its endorsement of unsustainable social welfare programmes, or its policies of rights inflation”.

Scheffler offers a Rawlsian interpretation of the rise of populism in the form of Trump’s presidential win in 2017 as a sign of the “vindication of liberal theory” (ibid.). He suggests Rawlsian liberalism provides a necessary condition for the stability of liberal society, namely, the ideal of reciprocity. As mentioned in previous chapters, the principles of justice are reciprocal principles in that they are for the mutual benefit of all citizens. In addition, reciprocity is a key capacity of the reasonable aspect of the individual. The moral psychology Rawls relies on to show the necessity for developing reciprocal relations of love and care is fundamental for mutual cooperation to be possible.

Scheffler claims that the current lack of reciprocity can be seen in the United States today in two forms. Firstly, in protests such as the Black Lives Matter movement, where citizens protesting the systemic acts of violence and racism are suggestive of the fact that there is a breakdown of reciprocity, insofar as political and social institutions fail to protect what he calls “the good life of all citizens” (ibid.). Secondly, excessive economic inequalities have increased the anger and resentment of citizens in the United States, which creates the perfect conditions for a populist leader such as Trump to thrive. Scheffler (2019) argues that the emphasis Rawlsian liberalism places on reciprocity as a necessary condition for stability demonstrates that if reciprocity is not adequately developed then liberal democratic society will be inherently unstable, and populist leaders such as Trump will gain adherence precisely because Trump and similar leaders campaign to maintain and exacerbate the imbalance in the system.

Paul Weithman¹²³ responds to Scheffler's argument that Trump's election highlights the need for, yet the failure of developing Rawlsian reciprocity necessary for liberalism's stability. Weithman disagrees with Scheffler; he states that the current economic inequalities do not highlight the failure of adherence to Rawlsian economic reciprocity, as it is not clear if these current economic inequalities in the United States meet the benchmark distribution requirement of the difference principle. Instead, Weithman argues that these economic inequalities, along with Hochschild's sociological evidence, point to an alternative possible failure of Rawlsian reciprocity, namely that when the least well-off are made as well-off-as possible, citizens above the previous least well-off could experience antagonism towards the newly better-off (Weithman 2020, 430).

Weithman relies on Hochschild's sociological investigations into Tea Party voters in Louisiana to understand and analyse the so-called "angry working-class voters" (ibid., 423). Weithman notes that Hochschild's interviews reveal that these voters share similar feelings of anger and resentment towards other citizens that they feel are benefiting at their expense. These voters feel as if they are in a worse-off position now, while they witness other citizens who were previously below them, now rising to their economic positions and higher. These interviewees feel that their resources such as their taxes are being used for the benefit of other citizens and not their own. Due to this, this group of citizens feel as if they are not given respect by their government, and this leads to feelings of alienation and hatred of their fellow citizens (ibid.).

Weithman states that this sociological evidence could show that Rawls's 'chain connection'¹²⁴ is not adequate to avoid "provoking downward-direct resentment" between citizens (ibid., 430). Weithman uses Hochschild's sociological research to demonstrate the possibility that "large-scale investment in transfers, targeted exclusively to identifiable and disadvantaged groups, are almost sure to be taken as violations of reciprocity, to stoke downward-looking class antagonism and to heighten the attraction of populism" (ibid., 431).

Weithman focuses primarily on the economic basis of reciprocity. One's economic position does directly impact one's self-worth, but there are other social aspects that enable the

¹²³ See: Weithman, P. 2020. 'Comment: Reciprocity and the Rise of Populism', *Res Publica*, 26, pp. 423–431.

¹²⁴ For a further understanding of chain-connection see pp 90–91 in Mandle, J. and Reidy, D.A. 2015. *The Cambridge Rawls Lexicon*. Cambridge: Cambridge University Press.

condition of reciprocity, according to Rawls. Weithman indirectly acknowledges that there is a collapse of the ‘social basis of self-respect’ but only in response to saying that Hochschild’s interviewees do not feel as if their self-respect is being recognised since they view themselves as a means to other citizens’ advancement (ibid., 426).

Weithman further states: “[T]hat the resentment of Hochschild’s interviewees is racially tinged is important, but I shall leave that fact aside to draw out the bearing of her deep story on reciprocity” (ibid.). He contends that the racial resentment these voters feel is not relevant here. I disagree. In the following section, I argue that because these voters compare themselves to marginalised groups that are rising above them economically, this is suggestive of an alternative failure of liberalism, the underdevelopment of the moral psychology of citizens, which I explain now.

4.3 The underdevelopment of the moral psychology of liberal citizens

While I present my argument in this section, allow me to highlight aspects of Hochschild’s deep story. In Chapter 9 of *Strangers in Their Own Land* (2016, 135) Hochschild presents a metaphorical story, to expose the sentiments of her interviewees, and her interviewees confirmed that this story encapsulates their experiences and feelings. Hochschild begins (ibid.):

“You are patiently standing in a long line leading up a hill, as in a pilgrimage. You are situated in the middle of this line, along with others who are also white, older, Christian, and predominantly male, some with college degrees, some not. Just over the brow of the hill is the American Dream, the goal of everyone waiting in line. Many in the back of the line are people of colour – poor, young, and old, mainly without college degrees. It’s scary to look back; there are so many behind you, and in principle, you wish them well. Still, you’ve waited a long time, worked hard, and the line is barely moving”.

In the previous section, I claimed that the resentment these voters (in this imaginary story that mirrors their lived experience) feel towards marginalised groups is an essential aspect of the deep story, because these voters compare themselves to other people, who look different to themselves and hold different moral values. It is when these ‘different’ and marginalised

groups (“people of colour – poor, young, and old”) cut the line or gain economic status at the expense of those already in the line, that their antagonism is represented in the story (ibid.).

Note, so far, and as the discussion continues you see that there is no mention of resentment that these ‘white, older Christian males’ have towards ‘white, young Christian males’ who may be moving up the line. Hochschild’s deep story does not make reference to ‘white, young Christian males’ moving up the line. This is not to suggest that these ‘white, young Christian males’ are excluded from the line (i.e., the economy), rather it could be suggestive that ‘white, young Christian males’ are not a source of disenfranchisement for this group of voters, since they are not represented in this deep story. Thus, they may not be a source of resentment for this group. Why is this? An in-depth response to this answer would require further sociological research post this thesis, but using this sociological investigation for now, I claim Hochschild’s deep story highlights the interconnection of the interviewees’ economic status, moral values, and their self-respect. If we return to the deep story:

“...You think of things to feel proud of – your Christian morality, for one. You’ve always stood up for clean-living, monogamous, heterosexual marriage. That hasn’t been easy. You’ve been through a separation yourself, a near, or actual, divorce. Liberals are saying your ideas are outmoded, sexist, and homophobic, but it’s not clear what their values are. And given a climate of secular tolerance, you remember better times, when as a child you said morning prayer and the flag salute—before ‘under God’ had to come out— in public school” (ibid., 137).

As the deep story continues, one can see that these voters feel that they are hard done by because their views are no longer the moral unifying feature of America. With the rise of moral pluralism and liberty of conscience, these voters are confronted by views that challenge theirs and view their moral values as “*outmoded, sexist, homophobic*” (ibid.). The implicit sentiments of these voters seem to suggest that they long for a time when their religion was prioritised by the state. Tolerance for other moral values may threaten their way of life such as their values of monogamous and heterosexual marriages, as these values form part of their source of self-worth. This passage highlights two aspects.

One, that these citizens have not internalised the liberal tradition; liberty of conscience is a core moral sentiment of the liberal tradition. Here it appears as if these citizens would prefer the state to prioritise their religion over other comprehensive doctrines. For Rawls (2005,

194) this is an unjust demand as a just society is one where the state does not promote one singular comprehensive doctrine, as discussed in Chapter 2. Two, it seems as if the issue of these voters' self-worth as being challenged not only by the person cutting the line but by what kind of person is cutting the line, a comparative distinction is drawn between the personal attributes of these voters, their position in the line in relation to the features of the persons once behind them, now cutting in front of them. Thus, I claim that the line cutting is not a purely economic issue but highlights a moral and psychological issue about the kind of person that deserves to be in the line in the first place.

“And President Obama: How did he rise so high? The biracial son of a low-income single mother becomes president of the most powerful country in the world; you didn't see that coming. And if he's there, what kind of a slouch does his rise make you feel like, you who are supposed to be so much more privileged? ... Blacks, women, immigrants, refugees, brown pelicans – all have cut ahead of you in line. But it's people like you who have made this country great. You feel uneasy. It has to be said, the line cutters irritate you. They are violating the rules of fairness. You resent them, and you feel it's right that you do ... People complain: Racism. Discrimination. Sexism. You've heard stories of oppressed blacks, dominated women, weary immigrants, closeted gays, desperate refugees but, at some point, you say to yourself, you have to close the borders to human sympathy – especially if there are some among them who might bring you harm. You've suffered a good deal yourself, but you aren't complaining about it ... If people are cutting in line ahead of you, someone must be helping them ... His name is President Barack Hussein Obama ... You feel betrayed. The president is their president, not your president ... If you can no longer feel pride in the United States through its president, you'll have to feel American in some new way – by banding with others who feel as strangers in their own land”
(ibid.).

I claim this extract shows these interviewees' sense of self-worth is tied to their historically privileged economic and moral position. They fail to accept the liberties and equalities of marginalised groups and the political value of equal opportunities. Instead, they view affirmative action policies as unfair in that these individuals are given the advantage to push in; when these policies enable marginalised people to move up the line, since without these policies of redress some groups would never move forward. The fact that these voters view

these policies as unfair could also be interpreted by the fact that they feel that these policies disregard their liberties, equalities and equal opportunities, and this reasoning ties to the fact that they feel as if they are not benefiting from social policies in the same manner as the line cutters. A just Rawlsian liberal society requires citizens to develop civic ties of friendship in order to acknowledge their mutual commitment to a fair social system. This extract highlights that there is a breakdown of the reciprocity necessary for social cooperation; an aspect of this breakdown is gross economic inequalities, but it could also be due to the breakdown of social reciprocity, such as citizens' underdeveloped sense of justice.

This deep story illustrates that these voters have a sense of distrust of marginalised groups and lack the desire to develop relations of mutual cooperation for the equal benefit of themselves and all members of society. Instead, they view the current rules of social cooperation as a direct threat to their own self-interest and way of life. These voters, it seems, do not have a problem in developing relations of loyalty and cooperating with those that they identify with, since they are not threatened by mutual cooperation with individuals that have always been in the line positioned similarly to themselves. I say this because the deep story that mimics their lived experience does not reference this as a point of resentment that these voters have. The distrust these voters have for citizens that do not share their moral identity shows that there are no civic ties of friendship developed among them and the line cutters. Instead, the only affectionate ties are the ties these voters have with like-minded individuals who share their values in their associational forms of life. This is precisely why these citizens are able to band together in social associations such as paramilitary groups; since they have some basis of moral development (morality of authority and morality of associations).¹²⁵ If they did not have this basis, they would not be able to develop affectionate ties with anyone.¹²⁶

¹²⁵ As discussed in Chapter 2, morality of authority requires the development of affectionate ties between partners, and parents, and children, while morality of association requires members of associations to form affectionate ties with one another. Once these affectionate ties have developed within the family and associational life, then citizenship need to develop ties of affection with fellow citizens and their commitment to uphold the political principles of justice. See the subsection IV in Section 2.3 of Chapter 2 for a full discussion.

¹²⁶ I am not suggesting that all these voters form part of paramilitary groups, these interviews and paramilitary groups in America share similar feels of resentment and anger, see Chapter 3 and my discussion of Rosenblum and the right to disassociate, which I return to in Section 5.6 of this chapter.

Thus, these citizens developed some of the capacities for citizenship in that they can form bonds of trust, love, and receive and show respect to their fellow members. Yet, as discussed in Chapter 3, these capacities may not be adequately developed if they do not internalise liberty, equality, and equal opportunity as necessary constraints on their ideas of the good. If the right does not extend to voluntary associations to safeguard the self-respect of all citizens equally, then there is a possibility that without this citizens cannot develop relations of mutual cooperation, or reciprocity with all citizens. Thus, this could explain why these voters have distrust for citizens, as they have not adequately developed morality of association underlying civic friendship.

In Hochschild's interviews, I suggest that her interviewees indirectly acknowledge that they do not feel that they receive the reciprocal recognition of their self-worth compared to other marginalised citizens, since they claim, "working-class whites are now regularly portrayed as moronic, while blacks are often hyper-articulate, street smart . . . and rich" (ibid., 144). Given the deep story and this quote, one can see that their civic friendship has not been developed; these voters fail to acknowledge the self-respect of people behind them in the line, while at the same time, they feel as if these same people do not acknowledge their self-worth and way of life. Thus, there is no reciprocal affective ties between the voters in the line and line cutters.

I argue that this deep story highlights the social condition of reciprocity (the lack thereof) compared to the lack of economic reciprocity because these angry working-class voters are not angry at those who are in front of them in line from the very beginning and who have a higher economic status than them. As shown in Chapter 3, illiberal views from civil associations in the so-called private sphere can infiltrate the public sphere. Similarly, those voters in the line may appeal to their comprehensive doctrines to justify why these people should not be moving up in the queue and when they do overtake them, feel enraged. Hochschild makes numerous references to Christian morality as a sense of pride for these voters. Janice, one of the interviewees states: "[L]iberals don't give personal morality itself its full due, probably because they aren't church'd" (ibid., 158). Views such as these could justify why these voters feel resentment in the line if 'liberals' pass them since these voters feel morally superior to 'liberals'.

As noted earlier, Scheffler (2019) claims that the Black Lives Matter movement could be seen as an example of this lack of reciprocity between members of society, since these

protestors do not feel as if they are given the same care and mutual respect that other citizens in American society receive, namely white individuals. Likewise, the same argument could be made for women after they marched in 2022 when *Roe versus Wade* was overturned.¹²⁷ These women are not given the same equal status over the control of their bodies as their fellow male citizens, which cause them to not see themselves as having the mutual respect of their fellow citizens.¹²⁸

This lack of reciprocity among these voters and protestors points to the fact that the capacity for a sense of justice has not been developed among citizens. This could be because the reasonable and the rational features of the relevant persons are currently incongruent with one another. In Chapter 3, I addressed the need for congruence between the moral powers of individuals. Without this congruence, it would require a person to have a split moral personality; they would be expected to reason in line with the values of justice in the public sphere and reason in line with their comprehensive moral doctrines in their private sphere. Yet, as shown in the previous chapter, if the rational is not constrained by requirements of justice, then political values such as liberty, equality, and equal opportunity are not internalised by all citizens and, thus, the social basis of self-respect is never developed. Therefore, reciprocity cannot be realised and liberal society will be inherently unstable. Hochschild's deep story and interviews shed light on the anger and resentment some citizens feel in the United States, insofar as they feel that their self-respect is not acknowledged. I claim that this lack of reciprocity between citizens is amplified by digital technologies, which I turn to now.

4.4 Amplification of the lack of the social condition of reciprocity by digital technologies.

In Chapter 2, I discussed the role of 'the non-public political culture' in Rawlsian liberalism. In *Political Liberalism* (2005, 443), Rawls states that "newspapers, reviews and magazines,

¹²⁷ See: Honderich, H. 2022. *Roe v Wade: Thousands March to White House for Abortion Rights*, *BBC News*. BBC. Available at: <https://www.bbc.com/news/world-us-canada-62109971>. For a discussion of digital privacy issues women could be facing since the overturn of *Roe v Wase* see: Sexton, M. 2023. *The New Front in the Battle for Digital Privacy Post-Dobbs*. *Third Way*. Available at: <https://www.thirdway.org/memo/the-new-front-in-the-battle-for-digital-privacy-post-dobbs>

¹²⁸ In addition, the high levels of gender based violence in South Africa could similarly point to the lack of reciprocity in the liberal constitutional democracy of South Africa. A sociological research post this thesis would need to be carried out to strengthen these claims.

television, and radio” form part of this non-public political culture. Digital technologies such as Twitter, Facebook, Instagram, TikTok, and YouTube form part of this non-public political culture.¹²⁹ These platforms are used by citizens to express their moral values and their alliance with civil associations and moral doctrines. Yet these social platforms occupy a precarious position in liberal society where the private and political aspects of society collide, as individuals now have the power and ability to voice their opinions and share their moral views with the world (Smith and Niker 2021, 1). In this regard, Mark Coeckelbergh (2022, 79) notes that the public and private divide that underpins liberal theory is non-existent in current political systems when it comes to digital technologies.

It is in these digital spaces that citizens engage in moral, political, and economic debates not only with their fellow citizens but also with individuals from around the world. The issue of how digital technologies can increase social injustices and inequalities already present in political systems needs more focus according to Coeckelbergh (2022, 5), who advocates for more research to show how AI technology is inherently political. Before I discuss instances where digital technologies disregard the political virtues of liberty, equality, and equal opportunity for citizens, I first address how digital technologies amplify the lack of reciprocity in liberal society.

Digital technologies can facilitate large-scale discussions on social and political issues yet, at the same time, these technologies could also facilitate the polarisation of views that aid in fragmenting political society as opposed to enabling social consensus necessary for democracy to flourish. With the rise of fake news, there is a call for the regulation of information on media platforms to encourage fair epistemic participation in digital technologies (Smith and Niker 2021, 1–2). One of the greatest challenges to fair epistemic participation is the role of echo chambers and epistemic bubbles.

An epistemic bubble results when individuals are not exposed to relevant arguments and information, as information that could provide an alternative perspective or counterfactual evidence is omitted. Thus, an epistemic bubble excludes alternative voices to a conversation in digital public spaces. In comparison, in echo chambers, alternative perspectives and

¹²⁹ For further discussion on the need for regulation of social media, see: Smith, L. and Niker, F. 2021. ‘What Social Media Facilitates, Social Media should Regulate: Duties in the New Public Sphere’, *The Political Quarterly*, 92, 4, pp. 613–620.

counterfactual evidence are not only omitted but have deliberately been discredited (Nguyen 2020, 141–142). Echo chambers are considered a high-risk threat to democracy since they form as a result of epistemic manipulation of trust. Echo chambers are epistemic structures that can account for how some citizens in liberal democracies have clear resistance to accepting alternative information, such as in the case of anti-vaxxers and climate change denialists (ibid.).

Both epistemic bubbles and echo chambers result in the segregation of public discourse¹³⁰ where like-minded individuals remain together and are polarised from citizens that hold alternative views. The danger this poses to democracy is that public spheres of discussion become “digital islands of isolation that are drifting further apart each day.” (El-Bermaway 2016). Echo chambers threaten public discussion in that their existence limits public engagement with citizens that hold alternative moral viewpoints (Kinhead and Douglas 2020, 127). In Rawlsian liberalism, citizens must acknowledge and develop the necessary capacities that enable them to want to and be able to mutually cooperate with one another who hold conflicting ideas of the good; it is clear that echo chambers could pose a threat to this capacity.

Echo chambers create an epistemic barrier to moral pluralism and liberty of conscience. If individuals such as angry working-class voters from the deep south have a distrust in climate change activists then these voters may never be able to acknowledge the activist’s right to hold such views, as they see these views as illegitimate. The social basis for reciprocity requires that citizens holding diverse moral views are able to disagree about their moral views, while at the same time agreeing to uphold political values of liberty, equality, and equal opportunity. Yet the epistemic manipulation that takes place in echo chambers prevents its members from trusting other citizens who hold alternative viewpoints. As mentioned however, the ability to form bonds of trust with fellow citizens is a necessary condition for citizens to develop their sense of justice. If citizens can only trust their like-minded members and have a distrust of their fellow citizens, then this undermines the possibility for the Rawlsian ideal of reciprocity in liberal society to be realised. Without reciprocity, liberalism

¹³⁰ Nguyen notes that although both epistemic bubble and echo chambers pose a threat to epistemic participation, echo chambers pose a great risk to individuals due to their self-reinforcing nature. For further discussion of this distinction, see: Nguyen, C.T. 2020. ‘Echo Chambers And Epistemic Bubbles’, *Episteme*, 17, 2, pp. 141–161.

will be inherently unstable as citizens would not have formed adequate capacities citizens need for mutual cooperation required for a just society to be realised.

Several studies have been undertaken to show the link between digital technologies and the rise of populist or extremist groups.¹³¹ Schroeder (2018, 60–81), traces the rise of key populist leaders (such as Trump and the Sweden Democrats) and their use of digital media as a key feature of the success of populism. He states that Trump’s controversial tweets provided him with greater media coverage than his opponents. More significantly, these controversial tweets themselves were targeted at his electoral base, which consists of the “less educated, male, more rural white population”, that share a distrust of government, the desire for nationalist policies, and hold anti-refugee and anti-immigrant sentiments (ibid., 65). I claim that Trump’s tweets¹³² amplified the lack of reciprocity among his electoral base and other citizens of liberal democratic America, as he appealed to the lack of trust his electoral base has in their fellow citizens. Coeckelbergh (2022, 87) refers to Trump’s voter base as being “politically lonely in Arendt’s sense, lacking a world of solidary and trust”. The distrust of citizens, the lack of access to alternative information, and the distrust of these views reinforces the lack of reciprocity in liberal society. Echo chambers exasperate this distrust through epistemic manipulation, which provides the fertile ground in which authoritarian, populist and extremist groups flourish.

Furthermore, Cambridge Analytica’s use of targeting individual voters based on their private behaviour on social media shows the porous nature of the public and private divide and the ability of unregulated technologies to invade the inner private sphere of voters for the public gain of presidential candidates (Detrow 2018). To the degree that digital technologies remain unregulated, they risk amplifying ethical failures such as liberal democracy’s deficiency of reciprocity. Let us now turn to instances where digital technologies amplify current social and economic inequalities, thus undermining the practical implementation for policies and goods to be distributed in line with the political values of freedom, equality, and equal opportunity. To note, in the next section, I am not focusing on economic inequalities and how they

¹³¹ See: Jackson, S. 2019. ‘A Schema of Right-Wing Extremism in the United States’, *International Centre for Counterterrorism*, pp. 2-27 & Dzihic, V. 2023. ‘The Far-Right in the Western Balkans. How the Extreme Right is Threatening Democracy’, *Austrian Institute for International Affairs*.

¹³² See: Coles, A. 2020. US Election: Donald Trump's 45 Most Controversial Tweets, *Sky News*, Available at: <https://news.sky.com/story/us-election-donald-trumps-45-most-controversial-tweets-12098204>.

undermine the economic condition of reciprocity secured by the second principle. I am only looking at how these economic inequalities undermine the social condition of reciprocity.

4.5 Amplification of the lack of equality by digital technologies

Issues of inequalities in digital technologies are largely centred around issues of discrimination and bias. Algorithmic bias is one example where discrimination can be seen in digital technologies. Due to the rise of data-driven AI and machine learning technologies, and the complex and intimate decisions generated by machine models, there is a growing need for reflecting on the ethical implications and ethical parameters of the outcomes of machine learning algorithms.¹³³ These concerns have gained increased awareness in AI in recent years with the rise of groups such as FAT/ML¹³⁴, DADM¹³⁵, and the Algorithmic Justice League¹³⁶, to name a few. Organisations such as these shed necessary light on issues such as the transparency of decision-making, algorithmic bias, identifying discriminatory data policies, and prejudicial training datasets.

There is a growing need to re-evaluate the ethical implications that result from algorithmic decision-making in machine learning. Firstly, a significant concern is the problem of pre-existing or historical bias¹³⁷ being perpetuated via the outcomes of machine learning algorithms. Bias in this sense is structural bias and refers to the development of prejudiced judgements based on preconceived views that are informed by society's current cultural assumptions and systemic injustices (Friedman, B., Brok, E., Roth, K.S., *et.al.* 1996, 48–51). Pre-existing bias¹³⁸ in the context of AI is a problem when decision-making algorithms

¹³³ See: Goodman, B., Flaxman, S. 2016. 'European Union Regulations on Algorithmic Decision-Making and a 'Right to Explanation', *arXiv [stat.ML]*. Available at: <http://arxiv.org/abs/1606.08813>; Pasquale, F.A. 2011. 'Restoring Transparency to Automated Authority', *Journal on Tele-Communications and High Technology Law*, 9, Seton Hall Research Paper No. 2010-28, pp. 235–256.

¹³⁴ See: Fairness, Accountability and Transparency in Machine Learning, Available at: <https://www.fatml.org/>.

¹³⁵ See: Pasquale, F.A. 2011. 'Restoring Transparency to Automated Authority', *Journal on Tele-Communications and High Technology Law*, 9, Seton Hall Research Paper No. 2010-28, pp. 235–256. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1762766.

¹³⁶ See: *Algorithmic Justice League - unmasking AI harms and Biases*. Available at: <https://www.ajl.org/>.

¹³⁷ Note critical machine learning focuses on a board range of issues, such as fairness, transparency, and accountability in machine learning processes. The focus of this section is only on bias.

¹³⁸ Note that there are a wide variety of different kinds of biases in AI ethics. For example, technical, emergent, and representational bias to name a few.

mimic and propagate the social injustices that are already evident in societies (Mehrabi, N., Morstatter, F., Saxena, N., *et.al.* 2021, 15–20). The reasons for this propagation are diverse.

Essentially, in developing algorithms, developers construct boundaries, rules, and success definitions for their algorithm, all of which act as both moral and practical constraints.

Constraints are ‘practical’, in the sense that algorithms need parameters and rules to delineate relevant information from irrelevant information. They are ‘moral’, in that they seemingly embody the normative prescriptions of the developer, inasmuch as they delineate goals, and embed values and ideological assumptions when modelling the algorithm, and also as they reflect and potentially amplify existing societal bias in training data (Brundage 2014, 365–368). The practical and moral justification for the exclusion or inclusion of information creates what O’Neil (2016, 23–46) terms ‘moral blind spots’, implying that developers construct algorithms in line with their preconceived societal judgements. This is precisely why O’Neil claims “models are opinions embedded in mathematics” (*ibid.*, 24).

In addition to these ethical concerns in algorithms, an important aspect to note is that digital technologies such as algorithms are created and operate in political systems that have structural inequalities, which can be amplified if not checked (Coeckelbergh 2022, 40). For example, the Correctional Offender Management Profiling for Alternative Sanctions (COMPAS) risk-assessment algorithm¹³⁹ prescribed that black defendants were at a higher risk than their white defendants of reoffending. This algorithm created a biased outcome as it was trained on historical data that contains human bias of racial historical prejudices. Thus, algorithms such as these can perpetuate the current inequalities in any political system. Since the majority of political systems worldwide have historically been prejudiced against radical and female groups, there is a greater risk that these groups may suffer from continued discrimination if historical bias is not addressed (Benton 2022a).

If algorithms continue to perpetuate historical bias and discrimination, this can lead to economic inequalities and inequalities of opportunity, as algorithms that are used to sort

¹³⁹ See: Larson, J. *et al.* 2016. ‘How We Analyzed the COMPAS Recidivism Algorithm’, *ProPublica*. Available at: <https://www.propublica.org/article/how-we-analyzed-the-compas-recidivism-algorithm>.

through job or home loan applicants¹⁴⁰ can continue to reject current applicants on the historical bias of previously marginalised groups. Rawlsian liberal society rests not only on the social basis of reciprocity, but requires economic reciprocity among citizens. Mutual cooperation of citizens is possible only if their self-respect is acknowledged. The social and economic status of citizens impacts their reciprocity. These algorithms have the potential to undermine economic reciprocity if they are not regulated since they have the potential to skew the distribution of economic resources based on historical inequalities. This would add to the destabilisation of liberal society, as it would result in the distribution of economic resources that are not in line with the principles of justice or the understanding of a fair society (ibid.).

One of the dangers in the context of machine learning is that the justification underlying the decision-making algorithm is implicit and, as such, machine reasoning may appear as “black boxes” (Gianfagna, Piccarozzi, & Cecco 2019). There is movement within the industry to make the constraints and success definitions of algorithms available to the public. Thinkers such as Crawford (2017), O’Neil (2016), and Nissenbaum (2001, 119–120), argue that it is not enough to publicise the underlying justification, but instead suggest, just as the training set, the source of the data the model learns from needs to be publicly audited, to make sure that the data itself is unbiased, so too should the success definition of the algorithms be audited, to shed light on the moral assumptions underlying algorithms (O’Neil 2016, 172). This opens the possibilities for widening the requirements of a successful algorithm to include fairness as a metric for training of machine models as opposed to the current metrics of efficiency and profit (ibid.).

Even instituting fairness as a metric to measure the success of algorithms is difficult as, after all, on the one hand, there is no standard interpretation of fairness, while on the other hand, the interpretation would be dependent on the various contexts in which models are used (Binns 2018, 1–11). Given the plurality of interpretations and understanding of moral and political norms, this calls for consensus on norms vis-à-vis, accountability, privacy, and fairness (Mittelstadt 2019, 501–503). Without societal consensus, ethical guidelines and frameworks being suggested in AI ethics are ineffective. Hagendorff (2020, 114) echoes this

¹⁴⁰ See: Emmanuel, M, Lauren, K *et al.* 2021. ‘The Secret Bias Hidden in Mortgage-Approval Algorithms’, *The Markup*. Available at: <https://themarkup.org/denied/2021/08/25/the-secret-bias-hidden-in-mortgage-approval-algorithms>.

concern when arguing that ethical guidelines offer superficial aid to ethical concerns in the AI industry, considering that current guidelines are voluntary and not an obligation, nor are there consequences for those that do not uphold the principles. Similarly, ethical frameworks in AI are so vast that they create a rise of ‘ethics shopping’, insofar as developers can choose frameworks that align with their own agenda, making the guidelines ineffective (Floridi 2019). As a result, ethical norms and parameters in AI are currently bound to relativistic debate and implementation. This is a brief discussion of some of the ethical concerns about AI technologies perpetuating systemic inequalities in liberal societies.

In the following section, I explain how Rawls’s insistence on a complementary relation between the right and the good can offer a stabilising solution of the decline of liberal values, before I pick up the discussion on ethical concerns about digital technologies again in Section 4.7 of this Chapter, allow me to offer a final insight into the instability of liberal democracies. So far, I have shown that the instability in liberal democracies is a result of the breakdown of ties of civic friendship due to the incomplete fulfilment of the final stage of moral development, namely, morality of principles. In this section and the previous I demonstrated how technologies undermine the ties of civic friendship.

In addition to ties of civic friendship, another key aspect for stability for Rawls is the possibility of an overlapping consensus, discussed in Chapter 2. To reiterate an overlapping consensus depends on a constitutional consensus, which is agreement to the political values that all persons would consider reasonable to uphold. Such political values are liberty, equality, equal opportunity, a fair society, the necessity for a social minimum. Once an agreement on the political values has been achieved, citizens can form an overlapping consensus. An overlapping consensus depends on citizens committing to these political values by ensuring that the political values and their comprehensive moral doctrines are in congruence (Rawls 2005, 159-167). That is to say, comprehensive moral doctrines should not undermine political values otherwise congruence will not be possible. Thus, for Rawls reasonable comprehensive doctrines are those that can develop this congruence.

I have not provided sociological evidence that can affirm or deny if an overlapping consensus exists in the United States, but the sociological evidence from Hochschild’s deep story does seem to imply that there may be disagreement with adherence to the political values themselves. For instance, Hochschild’s interviewees appear to have a problem with equal opportunity as a political value. Affirmative action policies are the kinds of distributive

policies that would be required by the second principle of justice to ensure that the political values can be realised. The interviewees' complaint regarding the implementation of affirmative action policies could be that they do not agree with policies to ensure fair equality of opportunity. If this is the case, then that implies that these voters disagree with the constitutional essentials. This disagreement might stem from an unravelling of the overlapping consensus.

There may be more supporters of unreasonable moral doctrines than there are of reasonable ones. This would result in a reverse process, a process of instability, whereby the breakdown of the overlapping consensus results in disagreement over constitutional essentials. Extensive sociological research would need to be done post this thesis to substantiate this claim, but theoretically if the suppositions above are correct, then stability of liberal democracy may be deeply threatened. It may also turn out that there was never an overlapping consensus in the first place, but only a *modus vivendi*. Moreover, if further research could be done in AI ethics to show the impact of digital and AI technologies in affirming or undermining an overlapping consensus then this could shed light on another possible form of instability. Now I turn to the possibility for stability in liberal democracies.

4.6 Stability of liberal democracies: justice as a collective non-comprehensive good

In Chapters 2 and 3, I have illustrated that in order for the capacity for citizenship to be developed, it is essential that the constraint of the right extends into the non-public sphere of society. Okin (1989, 134–169) highlighted an early failure of Rawls's theory; if the principles of justice do not protect women in the domestic sphere of society, they fail to provide women liberty and equality. Since Rawls took Okin's critique seriously, he altered his theory of justice to ensure that the principles of justice protect citizens even in their most intimate institutions such as the family. Thus, to reaffirm what has been shown in other chapters, he extended the application of the principles of justice to private non-voluntary institutions such as the family. The family as Rawls discusses in Section 50 of *Justice as Fairness: A Restatement* (2001), is essential as it forms the foundation of the moral development of citizens as it is the first place in which citizens are able to build affection ties necessary for the bonds of trust and love to develop, which are the preconditions for mutual cooperation with other members of society.

In Chapter 3, I demonstrated that the complementary nature between the right and the good requires strict congruence. This can be seen by Rawls extending the first principle of justice (and aspects of the second principle i.e., equal opportunity and a social minimum necessary for an open society) as the constraint to the family life, specifically. Furthermore, I showed how the institution of education would also require this constraint as it too was an institution that had non-voluntary features and was necessary for the reproduction of future citizens. I then demonstrated that voluntary institutions are forms of associational life, that are non-voluntary for children and, as such, growing up in institutions that do not take seriously the liberty, equality and equal opportunity of its members can negatively impact these members' self-worth. This could lead to a breakdown of ties of friendship within associations and civic ties of friendship among citizens as shown in the previous three sections of this chapter. The sociological evidence I provide in the first three sections of this chapter enable me to bolster my argument, for why I argue Rawls requires the first principle to constrain both the public and non-public sphere, and for why I disagree with Rosenblum's relaxed congruence.

To recap, as presented in Chapter 3, Rosenblum's argument for relaxed congruence between political values and associational life means that, for her, associational life can be made up of ways of life and values that would contradict or undermine liberal values. These contradictory moral doctrines should not be forced to liberalise as liberalism as a political doctrine safeguards liberty of conscience and moral pluralism. Thus, liberal society needs to accommodate illiberal values as citizens have the freedom to associate or disassociate as they wish. In addition, Rosenblum (2018, 48–53) states a just liberal society is one that can accommodate illiberal associations, because these illiberal associations still foster cooperation and affectionate ties among individuals.

I agree with Rosenblum; paramilitary groups, secret societies, conservative religious groups etc. are able to contribute to the second stage of moral development, morality of association for Rawls. Individuals within these groups are able to develop affectionate ties with one another; following from care and trust shown to members, members develop feelings of loyalty to one another and the willingness to cooperate in reciprocal relations within these associations. The sociological evidence¹⁴¹ Rosenblum gives to demonstrate this point, and Hochschild's sociological evidence of ties of loyalty among like-minded citizens, reaffirm

¹⁴¹ As stated earlier on Chapter 3, see her book *Membership and Morals: The Personal Uses of Moral Pluralism in America*, 2018.

this stance. Given that the voters form deep attachments of loyalty to their fellow “white, older Christian and predominantly male” members in the line (Hochschild 2016, 135), it is possible that these members are able to reach the second stage of moral development.

In contrast, I disagree with Rosenblum; just because these individuals are able to create affective ties with fellow associational members does not necessarily imply that they will be able to develop civic ties of friendship necessary for morality of principles, the last stage of moral development. This final stage of moral development rests on a shared commitment to the political values of a liberal society. If these same individuals form affectionate ties on illiberal values then the political values and associational values will be in conflict. For Rosenblum (*ibid.*, 160), as explained earlier that conflict is not a problem, I suggest from Hochschild’s sociological evidence it is a problem.

Individuals in liberal democracies such as the Hochschild’s resentful voters and the marginalised line cutters share no common loyalties or attachments, from what can be seen in the deep story. Moreover, it appears as if these voters feel that the state and the line cutters do not acknowledge their self-worth because the line cutters judge the voters’ way of life, and the state promotes the line cutters at the expense of the voters. Rosenblum (2018, 95) states that it is difficult to know the conditions under which the self-respect of persons is damaged or thrives. Although I agree that it is a challenge to know all the conditions in which self-respect thrives, Hochschild’s resentful voters are a good example to show that their inferior public and social position (i.e., by having people once behind them move ahead in the line) is impacting their self-respect, as they do not feel acknowledged as an equal, in terms of having equal entitlements to move ahead in the line.

In Rosenblum’s defence, she states it is difficult to interpret if actions impact someone’s self-worth or their self-pride (*ibid.*). Thus, in terms of Hochschild’s deep story, it is difficult for certain to know if this sociological evidence of voters’ resentment is evidence of a threat to these members’ self-worth or their self-pride. On the one hand, it could appear that it is the voters’ self-pride and not their self-worth being impacted as they may feel that they have a superior moral worth to those behind them in the line, which, as discussed in Section 4.2 of this chapter, it does appear that way. On the other hand, the fact that the voters feel that the state (in the guise of President Obama in the deep story) considers them less deserving to jump the line, then they may feel less worthy. Nonetheless, both self-worth and self-pride

require the external recognition of the state (in this case) to view individuals as free and equal and entitled to equal opportunities.

If both the voters and the line cutters cannot acknowledge and internalise the political values then the reciprocity, necessary for morality of principles, may not be possible, since there is no common ground that these individual can agree on in order to develop affectionate ties. Thus, civic friendship becomes an impossibility. The threat of this impossibility stresses the need for the right and the good to be complementary, to the degree that the sense of justice and the sense of the good do not conflict in terms of political values versus comprehensive moral values. To secure this agreement, Rawls extends the right as a demand to both the public and non-public spheres to ensure that political life and associational life, although different, can support one another, thus there can be congruence.

In the liberal constitutional democracy of the United States, the constraint of the right does extend into the family to a degree, in that members of the family have essential basic rights that cannot be infringed on by another member, thus providing citizens protection from physical abuse etc. Any instance in which a member of the family violates another member's right to liberty is enforced. Yet, what is not enforced is the liberalising of these institutions, or in other words, the internalising of the political virtues of justice into these associations.

American citizens are not required to reshape their civil associations or moral values. The 892 active hate groups that exist in American civil society are indicative of this lack of Rawlsian coherence between the right and the good.¹⁴² Allowing space for ideas of the good that contradict and even challenge the political virtues themselves leads to this disconnect between values in the public and non-public sphere. This disconnect undermines the social basis of reciprocity. If political values are not carried over as reasonable constraints of the good, then there can be no fusion of the moral powers of individuals. As discussed in the last chapter, the coherence between the right and the good is essential as without this, the individual will be left with a split moral personality. Their sense of justice and their moral reasoning will be at odds with one another, due to the fact that, in the private sphere, they hold illiberal values and form part of illiberal associations, while in the public sphere, they

¹⁴² For a list of active hate groups, see: *Southern Poverty Law Center*. 2016. Active hate groups in the United States in 2015. Available at: <https://www.splcenter.org/fighting-hate/intelligence-report/2016/active-hate-groups-united-states-2015>.

are required to mutually cooperate on equal grounds with the individuals they will not acknowledge as equal in their private associations.

The fact that Rawls would consider these hate groups as unreasonable doctrines does not translate to current liberal society, since these doctrines are generating support, rather than failing to gain adherents (seen in the increasing number of hate groups and populist and nationalist sentiments). The fact that these groups gain members as opposed to losing members is indicative of this breakdown of coherence between the right and the good (Southern Poverty Law Center 2016). If the political values of liberty, equality, and equal opportunity are internalised into the private sphere of individuals, only then can liberal society be able to generate its own support. Since this would provide the social basis of self-respect necessary for reciprocity to flourish.

My interpretation of Rawls requires calling for agreement between the right and the good in both the public and private spheres. This interpretation offers a solution to the demise of liberalism, precisely because it requires all citizens to acknowledge and uphold the political virtues as a collective good. For Rawls, a just society can only arise out of the collective participation of all citizens. Justice is then the social ideal that is achieved only when all citizens choose to acknowledge and adhere to the demands of justice and its constraints. When all citizens acknowledge and treat one another in line with the moral values of justice, namely liberty and equality, then reciprocity is possible. The need to reinforce political values in the private sphere provides a possible solution to the instability present in liberal democracies since it ensures the congruence between the need for the right and the good necessary for stability in Rawlsian liberalism. An illustration of the need for aligning political values with the regulation of values for combating algorithmic bias is given by Binns's work¹⁴³ on public reason referred to in Section 4.5, which I turn to now.

4.7 A possible Rawlsian solution

One of the core ethical concerns in digital technologies is the moral prescription embedded in machine learning algorithms. Whose morality matters and what moral values are important? Should the morality of the computer programmer count, or the moral values of the company

¹⁴³ See: Binns, R. 2017. 'Algorithmic Accountability and Public Reason', *Philosophy and Technology* 31, pp. 543–556, <https://doi.org/10.1007/s13347-017-0263-5>

creating the algorithm, or the values of the country in which the algorithm is created, or the values of those the algorithm will impact on?

Reuben Binns (2017) suggests turning to political philosophy for a solution. Binns proposes applying the method of public justification to analyse the ethical risks and quality of potential outcomes of the algorithms at issue. Looking to public reason is appealing since it offers us the possibility to align the decision-making outcomes of the algorithm with the core moral values of stakeholders within a liberal constitutional democratic society, thus legitimising the decision-making outcomes of the algorithm itself. Before I discuss Binns's argument for the use of public reason in algorithm accountability, allow me some background remarks on public reason and its use in political philosophy and liberal theory.

I Public reason

In essence, public reason as a method of justification for moral and political principles requires that these principles are publicly justifiable and accepted by those to whom these principles apply (Quong 2013). This tradition of moral agreement of overarching principles that can act as a moral consensus for societal rules traces back to thinkers such as Hobbes in the *Leviathan*, Kant in the *Groundwork for the Metaphysics of Morals*, Rousseau in *The Social Contract*, and, more recently, to Rawls in *A Theory of Justice*. Public reason is intrinsically tied to liberal theory, since a key premise of this method of justification is the conception of persons as free to construct their own social, moral, and political norms. Considering that persons have the freedom to construct their own moral views, this gives rise to the phenomenon of moral pluralism in constitutional liberal democratic societies. As discussed in subsection I of Section 2.1 of Chapter 2, moral pluralism is a notion used by liberal theorists such as Rawls to denote an essential feature of liberal societies i.e., moral disagreement regarding fundamental moral principles, ideals, and values. Similarly, in subsection II of Chapter 2, I addressed the 'burdens of judgement' in a liberal society, which accounts for the fact of reasonable disagreement among moral values, yet develops moral consensus on political principles (Rawls 2005, 54–8).

Consequently, as discussed in the same subsection of Chapter 2, moral truths (i.e., universal moral views, namely, religious, metaphysical, or philosophical doctrines that prescribe comprehensive moral values) cannot be the basis of moral agreement in liberal societies since all citizens hold contrasting and conflicting views on what the foundation of moral truth

should be (Rawls 2001, 8–9). The only type of moral agreement citizens can hope for is to agree to political principles and values that all citizens could endorse and would consider morally reasonable for all citizens to follow, given the circumstance of moral pluralism. To put it another way, citizens, in acknowledging their diverse moral values and ideals, reach an agreement on political principles and values that align with and promote their own values.

Public reason (as shown subsection I of Section 2.3. of Chapter 2) requires that political principles can be affirmed by persons upholding multiple moral doctrines, for the principles do not presuppose an antecedent truth of any one moral doctrine. But if moral truth is not the foundation for political principles, and citizens of liberal society hold conflicting moral values, then the underlying foundation of the political principles that they all can endorse can be constructed.

This construction is achieved via the method of reflective equilibrium¹⁴⁴, which exposes the underlying common moral norms that could be the foundation for the political principles of a liberal society, illustrated in subsection II of Section 2.2 of Chapter 2. As discussed in Chapter 2, reflective equilibrium is a method to expose and align the moral assumptions (i.e., ‘moral sentiments’) and acceptable political principles (i.e., ‘considered judgements of justice’) of citizens of a constitutional democracy (Rawls 2001, 31). A state of wide equilibrium is reached when, after continual reflection, implicit moral values that are common to all citizens are identified.

One of the core implicit moral values for liberal constitutional democracies, Rawls claims, is freedom of conscience. All citizens would recognise themselves and others as having the freedom to choose how to give their life meaning, given the premise that liberal societies are characterised by moral disagreement. Other implicit moral norms in a liberal society include tolerance, equality, and freedom, to name a few. These are all core implicit moral norms as they help facilitate citizens’ individual freedom.

These implicit moral values act as points of convergence of all citizens’ conflicting moral doctrines, and if citizens can agree to uphold these implicit moral norms, then these norms

¹⁴⁴ Although Rawls popularised the term ‘reflective equilibrium’ and applied this method to the field of political philosophy, this method of justification was developed prior to him by Nelson Goodman. See: Goodman, N. 1955. *Fact, Fiction, and Forecast*. Cambridge, Massachusetts: Harvard University Press.

become the underlying constitutional essentials for political principles (Rawls 2005, 181). Given this, citizens can develop moral agreement without appealing to comprehensive moral doctrines directly, but rather by appealing to these implicit moral standards that are collectively shared across all moral doctrines to which they subscribe. Political principles that best manifest these common fundamental moral values are principles that acknowledge the liberty and equality of persons, such as Rawls's two principles of justice. Freedom of thought, freedom of movement, freedom of occupation, and equal opportunity to wealth are examples of the kinds of political values that citizens would find reasonable to uphold (Rawls 1982, 22–23).

As discussed in subsection I of Section 2.3 of Chapter 2, all citizens affirm the same political principles, yet do so for different reasons, influenced by the different moral doctrines that they adhere to (Rawls 2001, 2–4). These political principles that citizens agree on then limit the boundaries of what is acceptable moral disagreement within a liberal constitutional democracy. This point of 'moral congruence' Rawls refers to as the 'overlapping consensus' (ibid., 32–38). An overlapping consensus is achieved when the same conception of justice receives public support from diverse comprehensive doctrines. To note, this 'moral congruence' does not imply a commitment to a comprehensive moral system but rather are substantive moral values of the liberal tradition, hence non-comprehensive political values of justice as any reasonable comprehensive moral doctrine can uphold.

Allow me a hypothetical example to illustrate my point. A citizen belonging to the Islamic or Christian religion may choose to uphold the same political virtue of toleration or choose to uphold the value of liberty of conscience, as a citizen who subscribes to atheism, as these values and principles themselves help to secure both citizens' ability to practice their moral doctrine. Yet at the same time, not all variants of Christianity, Islam, and any other religious, metaphysical, or philosophical moral doctrines can coexist. The radicalised versions of any moral doctrine will not be acceptable in a liberal society since they would not align with the constraints of the right, namely, adherence to liberty and equality. The significance is that only liberal versions of any moral doctrine can be aligned with and encouraged by the implicit moral norms themselves. As demonstrated in previous chapters, this moral prescription of the right is necessary for reciprocity in a liberal society (Benton 2022, 615–618). A reminder that this discussion of reasonable comprehensive doctrines, as opposed to fundamentalist doctrines, was covered in subsection IV of Section 2.2 of Chapter 2. I reiterate

it here for clarification purposes, to highlight that Rawlsian liberal society cannot account for every form of life. The demarcation between what are acceptable and unacceptable forms of life are those that can uphold the political values of justice. The implications of this is discussed in the following section. For now, it is important to turn to Binns's argument.

III Binns: An appeal to public reason to address algorithmic structural bias

Binns (2019, 548), in acknowledging the plurality of moral views between various stakeholders, recognises the problem that some stakeholders may not be accepting of the moral justification used by the developers when constructing any algorithm. As such, this would lead to a further rise in moral disagreements and widespread debate as to what method and values should be used when modelling algorithms. To circumvent this disagreement, Binns, as previously stated, turns to public reason to develop moral consensus between those that model algorithms (i.e., 'decision-maker') and those to which algorithms apply (i.e., 'the decision-subject'). Since the 'decision-maker' and the 'decision-subject' exist in a liberal society characterised by freedom of conscience, the possibility for moral consensus seems unlikely, since, by definition, moral pluralism makes moral agreement appear less plausible. This situation could lead to a standoff between prioritising either the 'decision-makers' or the 'decision-subject's' moral values and interests. Either way, this prioritisation would lead to some disenfranchised stakeholders (ibid., 549).

Binns suggests using public reason as the gatekeeper of accountability when modelling algorithms. For Binns, public reason as a method of justification can be applied between 'decision-makers' and 'decision-subjects' to mediate reasonable ethical and epistemic standards from the unreasonable, by identifying the overarching common values all persons can agree to. This agreement then sets the boundaries for acceptable rules in AI.

The advantages of public reason in AI, according to Binns, are the following: Firstly, it can help identify problems of algorithmic bias by identifying biases in the data or in the modelling, while comparing the moral values represented in incidents containing bias to determine if they are unreasonable by reference to the shared moral norms underpinning liberal societies. Secondly, if stakeholders agree to collective moral norms that they find reasonable to guide the industry, this could legitimise the decision-making aspect of modelling algorithms. Thirdly, public reason may be a useful method of justification to denote public and private algorithmic accountability, since different values, scope, and

context to which an algorithm applies may be the reason for an action being discriminatory or reasonable. Subsequently, Binns suggests public reason could be used to determine reasonable epistemic standards from the unreasonable, where there is debate over correlation, causation, and the nature of a relation between entities. Lastly, public reason could be used to delineate common moral values from moral doctrines, while making sure that the latter is not used as a justification for preferential treatment in the modelling of algorithms or as grounds for objection to algorithms (ibid., 550–552).

Binns acknowledges that the method of public reason is currently being used in AI, seeing as general ethical frameworks and recommendation policies such as AI4People (Floridi, Cowls, Beltrametti, 2018) align their guidelines with legal and political principles that govern liberal societies. However, he acknowledges that a pitfall for public reason could be the opacity of the decision-making aspect of algorithms as it may prove impossible to know if the justification of algorithms aligns with the moral values in a liberal society. Yet, Binns (2017, 552–553) claims the goal of algorithms and their training data can still be assessed in light of public reason.

Binns’s argument for public reason to guide accountability in AI is attractive as it provides a solution to the continual disagreement between stakeholders’ interests and values. However, a shortcoming of public reason is that it is only applicable to liberal societies, as previously mentioned. The implication of this is that it cannot act as the method for public justification on a global scale, since not all countries subscribe to liberalism. Considering that there are countries that are modelling and training algorithms with their own comprehensive moral doctrines guiding the decision-making process, it seems that a universal method of justification for AI accountability, founded on public reason, may face challenges in arriving at common moral values they all share. Without all countries agreeing on the same implicit moral norms, there is no basis for moral agreement in public reason on a global scale.

However, on a national and supranational level, public reason remains a possibility as a method of public justification as long as it is among liberal societies with shared moral values.¹⁴⁵ The EU AI Act illustrates this possibility as it entails numerous liberal democratic

¹⁴⁵ For guidelines and examples of basic moral values in the AI industry, see: Jobin, A., Ienca, M. and Vayena, E. 2019. ‘The Global Landscape of AI Ethics Guidelines’, *Nature Machine Intelligence*, 1, pp. 389–399, <https://doi.org/10.1038/s42256-019-0088-2>

countries building a shared framework of accountable AI regulations around a shared set of liberal values. The fact that the EU AI Act and the United States AI Bill of Rights align in moral values—to the degree that both regulations uphold the political values of liberty and equality of persons—highlights the possibility for moral consensus across liberal countries.

IV The necessity to audit implicit moral norms of public reason

As established throughout this thesis, liberty, equality, tolerance, and freedom of conscience are some of the core accepted moral values of a liberal society. Throughout this thesis, I have referred to them as political values. In this chapter, to stress the moral prescription they promote, I refer to them as either moral values of a liberal tradition or non-comprehensive moral or political values. The point of this distinction here is to emphasise the moral prescription of the political values of a liberal society. To continue then, non-comprehensive moral values of justice (liberty, equal etc.) promote political principles such as the absolute¹⁴⁶ respect of individual rights, freedom of speech, equal opportunities, and tolerance to those citizens who hold alternative moral doctrines. Due to this, the rights and liberties of persons must be given a prioritised position of importance in that they have to be instituted and affirmed unconditionally. Hence, the political principles they promote are not prejudiced against persons based on their race, gender, sexual orientation, or religious affiliation. In fact, these liberal democratic moral values embedded in the political principles encourage the inclusion of dissimilar persons and their freedom to develop, pursue, and follow their own ends in line with their chosen moral doctrine.

If these implicit moral norms of liberal democratic society are not inherently prejudicial, why do I suggest earlier that it would be necessary calling for a continual audit of these norms and their implementation in digital and AI technologies in a liberal society? The reason is precisely because these non-comprehensive moral values of a liberal democratic society are just that, prescriptive notions of good and bad ideals that have become normalised and used as the moral foundation against which we distinguish morally permissible from morally impermissible actions.

Any society will necessarily include some values at the expense of others; that is the nature of political theory itself. Unavoidably moral or political theorists cannot account for all possible

¹⁴⁶ Rights remain absolute, insofar as they are the prioritised values in liberal constitutional democracies.

forms of life, there are certain moral assumptions that have to be made, and these assumptions will then delineate the permissible from the impermissible moral actions. Thus, any political system will naturally favour and, hence, encourage certain societal ideals, and as a result, would exclude other moral ideals. I have shown this in Chapter 1 and will return to it in Chapter 5 to show how the political values for Rawls are embedded in the moral tradition of liberal democracy.

Since the moral foundation of any theory such as Rawls's justice as fairness starts from presuppositions of historical times, then those presuppositions themselves are not neutral values. Instead, these implicit moral norms of any liberal society become societal moral 'blind spots', insofar as citizens are encouraged by their social context, and reinforce the values that surround them (O'Neil 2016, 106). Similarly, stakeholders (those modelling algorithms and those impacted by algorithms) in the digital and AI industry make decisions from within their social, moral, and political context. The societal moral norms of our time will inform what we think are the correct moral judgements to make. Thus, even if public reason is used to clarify reasonable moral values for potential algorithmic outcomes, the implicit moral values that underly this societal consensus still promote moral ideals. In order to be cognisant of the moral ideals promoted in liberal constitutional societies, it is important to audit the values and their implementation to assess the ostracising impact of these values, which may be deemed harmful only in hindsight evaluation.

To illustrate this point, let us return to the hypothetical example from the previous section. As stated earlier in this section, a feature of liberal society is moral pluralism. Inasmuch as persons wish to affirm their own freedom to choose their own moral doctrines and life plans, the foundation for moral agreement (i.e., public reason) is freedom of conscience. In recognising freedom of conscience as the implicit moral norm of liberal societies, persons indirectly accept that their moral doctrine is not the only doctrine that can exist in a liberal society. Hence, by agreeing to this, citizens acknowledge and reaffirm the moral view that there are multiple moral truths to find meaning in their own lives. To put it another way, citizens of a liberal society have to concede that there cannot be one moral truth i.e., one moral doctrine that should govern all social and political life as this is inappropriate for a liberal society, given moral pluralism, as I explained in Chapters 1 and 2 (Rawls 2005, xlvii–li). Thus, even if citizen A subscribes to Islam, citizen B subscribes to Judaism, and citizen C subscribes to atheism, all citizens have to be conscious that their fellow citizens have the right

to choose their own moral doctrine. Thus, as shown earlier in this chapter, they have to acknowledge the freedom and equality of other members.

Given this, citizens A, B, and C cannot hold radicalised or fundamentalist versions of their moral doctrines, owing to the fact that by definition a radicalised version of any philosophical, metaphysical, or religious doctrine implies that there is only one moral truth, and that all persons should uphold this antecedent notion of moral truth. As I show in the following chapter, an example of a political system founded on this form of reasoning is a theocracy, which promotes a religious moral truth. Therefore, citizens of liberal democracies that would subscribe to religious fundamentalism would not identify with the implicit moral norms of liberalism (such as liberty of conscience). Hence, they are not able to reach moral agreement via the method of public reason. Considering that such citizens could not publicly justify their moral doctrine, their moral doctrines would be considered unreasonable in a liberal society (Benton 2022a, 615).

This suggests that the kinds of moral doctrines that can flourish in a liberal society are purely *liberal* moral doctrines. That is to say, liberal citizens can have any religious or metaphysical affiliation if and only if they denounce the radicalised version of their moral doctrine, in other words, internalise the constraint of the right in the private sphere of society. The importance of this constraint is that although liberal society is not prejudiced against comprehensive conceptions of the good such as religious affiliation, there are moral doctrines that cannot gain support via public reason. Or if they did gain support, such as in the example of the rise of hate groups earlier in this chapter, this could undermine the stability of liberal society (ibid.).

What happens to individuals in liberal societies who hold radicalised moral doctrines? I argue that in the digital sphere, there is a potential tendency for algorithmic outcomes to exclude or censor such individuals, on social media platforms such as Twitter, Instagram, and Facebook, for instances of hate speech. The justification appealing to the promotion of liberty and equality, two core moral values of liberal society, and, hence, function as political values, insofar as they must be upheld by all citizens.

In the infancy of social media platforms, public discourse was not hampered by regulations regarding when a post represents freedom of speech or when it transitions to hate speech. With the rise of increasing incidents of xenophobia, racism, sexism, bigotry, and harassment,

platforms have altered their community guidelines to try to address these intolerances and others. In addressing these intolerances, many social media platforms are starting to rely on algorithms to detect and censor users' content before it becomes available to other users and causes harm (Cobbe 2020, 739–766). Although these algorithms are in their early stages, their potential to identify these discriminatory acts is appealing, and offers the ability to safeguard democratic values. Yet, currently, certain forms of discrimination are harder for algorithms to identify than others. For example, Facebook's algorithm identifies and removes only 38% of hate speech incidents as opposed to 99,5% of terrorist activity and 86% of violent images (Koebler & Cox 2018).

What these figures illustrate is the difficulty in identifying hate speech from freedom of speech. Take for example the following tweet by a social media user in a liberal constitutional society: 'The only God that exists is the Christian God, all other religious gods are false gods, so the government should endorse reading from the Bible in all government schools in the United States'. Does this moral view express a liberal moral doctrine or a radicalised moral doctrine? One could argue that it appears to be an expression of this user's moral point of view. Alternatively, the fact that the user acknowledges and makes the statement that no other gods exist, is implying an antecedent moral truth claim and the claim that the state should endorse the comprehensive doctrine would be an unreasonable request for Rawls, due to the fact that the state and the conception of justice it promotes should not be founded on or promote one singular comprehensive doctrine (Rawls 2005, 173–175). While a just liberal society should not promote a comprehensive doctrine, where to draw the line between doctrines that contain illiberal and unequal elements as reasonable is challenging, as stated in Chapter 1. This challenge could become more prevalent for liberty society in general due to the rise of digital and AI technologies in particular.

The question we need to ask is: Does censoring the examples such as this previous one, which may not seamlessly align with liberal values, lead to protecting individual liberty or the creation of what would become historical bias and discrimination in hindsight evaluation? I suggest that only by critically auditing the implicit liberal moral values, and their interpretation on an institutional and societal level, would policymakers, ethicists, computer scientists, and private and public corporations be able to arrive at an informed understanding of the kinds of biases and discrimination that could be promoted as a result of encouraging liberal values (Benton 2022a, 617-618).

Although I agree with Binns that public reason is an appealing method of justification to gain moral agreement between stakeholders in the AI industry for liberal societies on a national and supranational level, the fact is that public reason, as a filter for identifying implicit moral values to determine reasonable algorithmic outcomes, needs to be reinforced by the continual auditing of the implicit moral norms that constitute the content of public reason. It is only through critical and continual examination of foundational moral sentiments that underly the political values that we can hope to become aware of the implicit moral assumptions being prompted in liberal society via digital and AI technologies. This awareness for what values are being promoted can show if the construction, implementation, and outcomes of technologies align with or undermine the political values of the country that they function within. This will help to identify when the values of right and the good are in conflict.

4.8 Conclusion

As shown in Section 4.2 to 4.6 of this chapter, it is important to interrogate how the moral values and forms of associational life help or hinder the agreement between political values and acceptable forms of moral life. One, if agreement is not achieved, this could result in an unstable liberal democracy as there are not enough citizens to support the adherence to liberal values. Two, unregulated digital and AI technologies as shown can amplify values and historical biases that undermine the political values. Both features expose the fact that the right and the good are not in agreement with one another, as the values in associational life contradict and undermine political values.

Moreover, the resentfulness citizens feel in liberal democracies, as seen in Hochschild's interviewees, highlights an important aspect of instability, the fact that the morality of principles as the final stage of moral development has not been achieved, which is an important condition for stability. Citizens from diverse backgrounds do not have civic ties of friendship that help them form associations of loyalty to one another for committing to uphold the political values. Therefore, Hochschild's sociological evidence helps highlight that a sufficient sense of justice to commit to uphold the political values has not been developed as citizens are antagonistic towards their fellow citizens.

Hence, throughout this chapter, I have demonstrated that the instability of liberal democracy in the twenty-first century is precisely because liberal citizens have not cultivated the necessary capacities for citizenship that enable the ideal of reciprocity as ties of civic

friendship. This lack of reciprocity is amplified by digital technologies, as seen in both the content on digital media platforms and the problems of bias and discrimination that are encouraged due to the way in which digital technologies are regulated. I then demonstrated how my interpretation of Rawls offers a solution to the instability of current liberal systems. His emphasis on the coherence between the right and the good enables the moral development necessary for reciprocity as the foundation of justice.

To expand on potential Rawlsian solutions to ethical concerns in the digital and AI technological environment, the point of Section 4.7 is twofold. Firstly, I aimed to show how aspects of Rawlsian or liberal political theory have been suggested as a gatekeeper for algorithmic accountability by Binns. I agree with Binns's solution to turn to public reason to resolve this ethical concern, but auditing the moral norms that underly the consensus is still important to, firstly, see if the consensus is in line with liberal democratic norms and, secondly, if they are then to ensure that the metrics used for training machine models include metrics of fairness that align with the political values of the liberal democratic tradition.

In Chapter 2, I set the theoretical base of justice as fairness. In Chapter 3, I demonstrated the need for strict congruence between civil society and political institutions that Rawls argues for (in my interpretation) since justice is the condition for both spheres. In Chapter 4, I then gave sociological evidence for the decline of liberal values, which I argued were a result of this complementary relation between the right and the good not being developed. In Chapter 5, I discuss in detail how the complementary nature of the right and the good Rawls develops safeguards him from communitarian critiques and, more significantly, how this complementary relationship between the right and the good cannot be conceptualised adequately within the current binary construct of the priority of the right and the good in political philosophy.

Chapter 5: The continuum of the priority of the right and the good¹⁴⁷

5.1 Introduction

The aim of this chapter is twofold. Firstly, I argue that the most accurate description of Rawls's theory of justice is as a position along a continuum of structural relations between the right and the good, ranging between the two extremes of the priority of the right on the one end, and the priority of the good on the other. Secondly, I claim that reconceptualising the relationship between the right and the good as gradations on a continuum better highlights the nuances in how philosophers theorise about morality and justice, and how this translates to political systems.

In this chapter, I propose an alternative reading of Rawls's theory of justice after his political turn. I suggest that Rawls develops a complex and nuanced relationship between the right and the good that cannot be fully encapsulated by the current binary representation of the priority of the right, on the one hand, and the priority of the good, on the other. As discussed, and illustrated in Chapter 2, Rawls defends the stance that principles of justice should be independent of comprehensive conceptions of the good and derived from a procedural method of justification. It is these views that have made Rawls's thought synonymous with the position of the priority of the right in political philosophy.

In contrast, in Chapter 3, I showed how the political values of the first principle of justice should be the priority moral virtue in all social institutions. The implication of this is that, although justice for the later Rawls is freestanding, the values of liberty and equality are overarching non-comprehensive moral ideals that all citizens should share. Justice as fairness overlaps more with some comprehensive doctrines than others, namely liberal conceptions of the good as seen in Chapter 4. Thus, the reasonable conceptions of the good that can form part of the overlapping consensus are promoted due to this overlap. By 'promoted', I mean that the reasonable comprehensive doctrines are those that are encouraged due to the fact that they overlap with the principles of justice. In other words, only doctrines that can incorporate the political values of justice as fairness can exist. Thus, as shown in Chapters 2 and 3, the political ideas of the good extend into the private sphere of citizens, thus restricting the good.

¹⁴⁷ In addition to my supervisors comments and guidance, this chapter has benefitted from the comments and criticisms of Darrell Moellendorf and Thaddeus Metz. Parts of this chapter were presented at the writing workshop hosted by the Department of Philosophy at the University of Johannesburg.

Highlighting these features of Rawls's theory could bring his position closer to the priority of the good. Hence, I suggest the most accurate characterisation of Rawls's theory would be acknowledging both dimensions of his theory and placing him in a range between the two extremes.

The current binary relation between the right and the good cannot accommodate placing Rawls's theory of justice, as I suggest above, within a range between the priority of the right on the one hand, and the priority of the good on the other. In this chapter, I show how and why I call for exactly this reconstruction of the current debate of the right and the good, namely that its context should change from a binary relationship to a relationship of dynamic ranges on a continuum of structural relations between the right and the good. By binary debate, I mean theorists are categorised into either extreme, either the priority of the right or the good, whereby these positions are mutually exclusive as a theorist cannot simultaneously give priority to rightness and rules of moral obligations on the one hand, while also prioritising goodness and conditions of moral worth on the other hand.

It is precisely this binary representation of the debate that I argue is problematic as it simplifies intricate moral and political theories into extreme opposing positions as a result of their supposed contrasting approach to the question of morality and justice. Due to this dualistic simplification of theories, I claim that the debate between the priority of the right and the good has been presented as a false dichotomy, as if theories that prioritise the right neglect the place of the good, or theories that prioritise the good are not as concerned with rules of obligations. This either-or presentation misses the essential intricacies of political and moral theorising in Rawls's theory of justice, as I demonstrate in in this chapter.

I argue that the reconceptualisation of the debate *as a continuum* is a more accurate representation of the multifaceted relationship Rawls develops between the notions of the right and the good since it avoids creating a false dichotomy between the right and the good. Thus, the continuum reduces the danger of reductionism, as theories are no longer reduced to some components to fit into these static opposing categories.

Allow me some additional remarks on the conceptualisation of the continuum here before I discuss the layout of this chapter. In recasting the debate, I propose the following conceptualisation: firstly, the right and the good should be represented as two distinct terms that can be defined and understood separately and independently of one another. In other

words, we can review and analyse these terms as having separate characteristics as briefly illustrated in Chapter 1. At the same time, this is not to suggest that a theory can incorporate the right or the good at the exclusion of each other. These concepts are intertwined in that claims about the right impose requirements on the good, while the good informs the content of the right. Hence moral and political theories have to account for both. Rawls acknowledges this in *Political Liberalism* (2005, 173) when he states:

“This priority may give rise to misunderstandings; it may be thought, for example, to imply that a liberal political conception of justice cannot use any ideas of the good at all, except perhaps those that are purely instrumental; or else those that are a matter of preference or individual choice. This must be incorrect since the right and the good are complementary; no conception of justice can draw entirely upon one or the other but must combine both in a definite way”.

Secondly, when a claim is made that a theorist is said to prioritise the right over the good or the good over the right, we should not understand either priority position as a homogenous stance. Rather we should view these priority positions as ranges on a continuum of structural relations between the right and the good, whereby theorists would be positioned along the continuum according to the nuances of the relationship they develop between the right and the good. In other words, two theorists that are considered to prioritise the right would necessarily be placed into the same broad category (e.g., the priority of the right) as they share fundamental features associated with other theorists who develop a similar affiliation between the right and the good. Yet, these same theorists might differ in their theory design and so they might occupy different positions on the continuum within the range of that category. Theorists have distinct aims, employ different methods of justification, and rely on particular traditions of thought. It is these aspects that draw theorists to different positions within this debate, which I address towards the end of this chapter.

I begin this chapter with a brief recap of the concepts of the right and the good. I then review the current debate between the right and the good. For this discussion, I refer to communitarian thinkers such as Alasdair MacIntyre, Michael Sandel, Charles Taylor, and Michael Walzer to demonstrate the priority of the good in moral theories and their criticisms

of the priority of the right.¹⁴⁸ This discussion is important as I show how my interpretation of Rawls's theory of justice having features associated with both the priority of the right and the good, enables him to address the criticisms levelled by thinkers from the priority of the good camp.

Now that I have set out the current paradigm, I must explain how and why reinterpreting this relation between the right and the good in terms of ranges as a range on a continuum of structural relations between the right and the good helps to demonstrate the nuanced relations theorists develop. In this section, I provide a detailed illustration of the continuum and how the right and the good function as ranges. I then provide a demonstration of the continuum between Rawls and Kant, whom I claim would occupy different positions along the continuum even though they are traditionally associated with the same priority camp. I then illustrate in Section 5.3 of this chapter, how Rawls could be said to develop a priority relation of the right yet hold features associated with the priority of the good, where he occupies a liminal position between these binary priority positions. His argument for congruence between the right and the good, where justice is the non-comprehensive moral virtue of all institutions and associations in justice as fairness, yet the content of justice is freestanding of comprehensive doctrines.

I then conclude this chapter with a discussion of how the priority of the right versus the good translates to political systems and why this binary representation too cannot account for the complementary nature of the right and the good, thus, highlighting the need to represent the categories of the priority of the right and the good to be understood as fluid gradations on a continuum. To begin, I now turn to a brief recap of the terminology of the right and the good.

¹⁴⁸ I refer to the following sources in the discussion of this chapter: MacIntyre, A. C. 1988. *Whose Justice? Which Rationality?* Notre Dame, Indiana: University of Notre Dame Press; 2007. *After Virtue*, 3rd Edition. Notre Dame, Indiana: University of Notre Dame Press; Sandel, M. 1982. *Liberalism and the Limits of Justice*. New York: Cambridge University Press; Sandel, M. 1984. 'The Procedural Republic and the Unencumbered Self', *Political Theory*, 12, 1, pp. 81–96; Sandel, M. 1984. 'Morality and the Liberal Ideal', *The New Republic*, pp. 15–17; Taylor, C. 1989. *Sources of the Self: The Making of the Modern Identity*. Cambridge: University Press; Taylor, C. 1989. 'Atomism', In: *Philosophical and the Human Sciences: Philosophical Papers 2*. Cambridge: Cambridge University Press, pp. 187–210. Walzer, M. 1983. *Spheres of Justice: A Defence of Pluralism and Equality*. New York: Basic Books, Inc; Walzer, M. 1994. *Thick and Thin: Moral Argumentation at Home and Abroad*. Notre Dame: University of Notre Dame Press.

5.2 Current debate between the right and the good

I begin this section with a brief definition of the concepts of the right and the good. This provides the theoretical context for discussing and contrasting the relations of the priority of the right and the good to one another. In the discussion of the priority of the right, I first address the features of this position and present Rawls and Kant as two thinkers associated with this position. Thereafter, in the section on the priority of the good, I describe this category, and in doing so I discuss why MacIntyre, Walzer, Taylor, and Sandel are prototypical thinkers of this position and critics of the priority of the right. I now turn to brief definitions of the right and the good.

I The right and the good defined

The concept of right is commonly associated with the idea of justice¹⁴⁹. In the context of moral and political philosophy insofar as one implies the idea of fairness and correctness is engaged, the right and the just are often used interchangeably. Rawls has contributed to the concepts of justice and fairness becoming increasingly fused in moral and political philosophy in the twentieth century with his theory of justice, discussion of the distribution of goods, entitlement claims, and rights discourse.

In general, when we discuss the concept of right or wrong in moral philosophy, we analyse the quality of an action carried out (Larmore 2000, 907). Right refers to the actions, rules, or obligations individuals have, for example, if one states murder is wrong in South Africa. In contrast, wrong denotes the rule of obligation that an individual in South Africa has to obey the laws in South Africa.

This notion of right being attached to legality emerged from Kantian philosophy. Kant (1991, 46) links the doctrine of the right to law. Right action for him, is seen to be an “objectively necessary” action and, as such, he argues that the right should be associated with external forms of lawgiving. Due to this, the right is associated with the concept of duty as an “external constraint” (ibid., 185–187). Rawls, much like Kant, characterises the right as objective. It is objective as he argues that the principles that govern the basic social institutions should be based on an *a priori* abstract source of reasoning. In other words, the

¹⁴⁹ For a more detailed discussion of the term justice, refer to: Pogge, T. 2005. Justice, in Borcert, D (eds) *Encyclopedia of Philosophy*. Second edition. Macmillan USA: Thomson Gale.

right should be determined from a neutral procedure so that the content of the right is independent of ideas of the good. Thus, the right is often seen to be devoid of subjective influences, personal desires, human values, or goals. Kant's distinction between perfect and imperfect duties offers another perspective for understanding and contrasting the right and the good. Perfect duties are duties an individual has a moral obligation to perform. They are unconditional and apply to all persons, no matter their circumstances, as these duties are grounded on *a priori* reasoning (Kant 2002, 40). Thus, they reflect features of the right in that they are mandatory, apply universally, and are independent of personal desires.

In distinction, imperfect duties are not rules of obligation but rather actions or desires one has for themselves and others around them. These duties are not prescribed; they depend on an individual's social and economic context and values to determine how they are to be implemented. For example, the imperfect duty of helping others may require different actions in different circumstances; a rich man in Switzerland and a poor female in South Africa will implement different actions when helping others. Since imperfect duties depend on one's relation to the world, they require empirical justification and relate to the discussion of the good. Insofar as perfect duties are relational to the actions and values of a person; they are linked to human sociability.

Leonard Sumner (1979, 99) affirms Kant's understanding of the right, when he suggests that "the right is fundamentally linked to deontic notions as 'obligatory', 'mandatory', 'demanded by duty', 'required', and their negative counterparts; their paradigm is 'right' (and 'wrong')."'

According to Audard (2014, 908), one could also further highlight the distinction between the right and the good in terms of the questions they pose. Questions of the right are centred on what kinds of laws should be applied to and upheld within societies or across societies. Or what actions could people be said to uphold categorically? Hence, there is a fundamental association between the notion of right and the idea of law and duty.

In terms of an act being right, W.D. Ross links right acts as acts that are either "... done from a sense of duty" (ibid.), "ought to be done", or those that are considered as "morally obligatory" (ibid., 3). It is the idea of moral obligation that W.D. Ross interprets as the fundamental characteristic when an action is said to be right (ibid., 4). Rawls, much like W.D. Ross, represents the right (the content and its conditions of justification) as that which

ought to be followed, hence the right aligns with the idea that citizens have a duty and an obligation to follow the right.

The distinction between the right and the good as two opposing categories traces back to Henry Sidgwick¹⁵⁰ (1907, 1–4), where he makes the distinction between two fundamental notions of morality, namely, the imperative and the attractive. The imperative use of morality for Sidgwick is the right since it is associated with a moral obligation or an unconditional action, hence, there is a judicial or legal element entailed, e.g., one has an obligation to not murder, while the attractive use of morality is the good since it refers to what we should do or what kind of person we should be. For example, the question “Is being a murderer virtuous?” illustrates the attractive use of the good since it focuses on the kinds of values and qualities persons should uphold (Larmore 2000, 907 & Audard 2014, 907–905).

The good is seen to be an alternative category of the right for moral theory, where the right addresses rules of obligations, the good addresses the values or benefits of a person, action, or theory (Edel 1968, 175–187). The good could either be intrinsic, extrinsic, objective, or subjective, denoting an ultimate end or a metaphysical ideal (Korsgaard 2000, 328). It is this predicative use of good that, according to W.D. Ross, is the fundamental focus of moral philosophy (*ibid.*, 73). One uses the predicative use of the word good to denote something about the subject to which it relates. For example, to say pleasure is good is to imply the following: firstly, that the pleasure is itself a good that is valued (*ibid.*, 66). When one extends the use of good to a person (i.e., about a morally good woman) or society (i.e., when one claims, that society is a good society), the association then is that this woman or societal institutions embody moral excellence as she or societal institutions are successful in fulfilling certain societal moral ideals/values (*ibid.*, 66).

Theories of the good generally presuppose answers to substantive questions such as what is the meaning of a good life? What does it mean to be a good person? What constitutes a good society? (*ibid.*) What kinds of ends persons or societies should uphold? What kinds of intrinsic values are important and what desires are essential to human beings? (Audard 2014,

¹⁵⁰ In Sidgwick’s distinction between the imperative and attractive uses of the right, he argues that a fundamental difference between modern Western moral and political philosophy and ancient West moral philosophy (i.e., Greeks) is that the latter focused on the attractive use of the right while the former focuses on the imperative use (Sidgwick 1907, 106).

908). Rainer Forst in *Contexts of Justice: Political Philosophy beyond Liberalism and Communitarianism* (2002, 3) clarifies three central categories of which the concept of the good could imply, namely, “(i) the good life of a person, (ii) shared conceptions of the good within a political community, or (iii) a higher good, in a culture-specific or objectivist sense”.

The full characterisation of the right and the good in all the ways they have been used in moral and political philosophy is beyond the scope of this thesis. The essential difference to note is that the good refers to prescribing overarching set of (generally comprehensive) values, goals, and ends of a person or society, whereas the right denotes rules of obligation for persons or society, without comprehensive moral prescription. The priority debate regarding the right versus the good is, thus, a debate concerning how moral and political theorists intend to structure the priority relationship between rules of moral obligation and the values or goals of persons or society.

This binary understanding of the right and the good is a difficult distinction to make as the conceptions are intertwined. For example, to say it is good to value life and, thus, not to kill shows that moral values and rules of obligations, in this case, are fundamentally merged. One cannot prescribe a rule of obligation without making reference to a moral value. Allow another example to illustrate this point. If one has to classify the Ten Commandments in the Hebrew Bible, should one classify them as rules of obligations or as prescriptive moral values? These two examples highlight the relationality of the right and the good, in that you cannot have one without the other. How they should relate and determine one another is the focus of the following section. For theorists that prioritise the good, rules of obligations carry a lesser weight and act as mere instruments to accomplish a version of the good. For example, with the Ten Commandments, here the commandments themselves are rules of obligations that serve an instrumental purpose for followers of this comprehensive doctrine to uphold in order to achieve the good of Christianity. In contrast, theorists that prioritise the right, consider rules of obligations are not mere instruments for the promotion of the good but as rules of duty that must be held regardless of the kinds of comprehensive goods that can or cannot flourish as a result of these rules.

I return to this discussion of the interconnectedness of the right and the good in Section 5.3, for now, it is important to give the background on how these terms have been characterised. Before I address why I consider this binary debate as problematic in Section 5.3 of this

chapter, in the following two sub-sections, I provide a description and discussion of the current debate and thinkers associated with either position, which I turn to now.

II The priority of the right

In this section, I explain the common features associated with the priority of the right and the similarities between Rawls and Kant to the degree that they both are considered quintessential thinkers associated with the position of the priority of the right. I address their differences in Section 5.3 of this chapter in the discussion of the priority of the right as a range on a continuum of structural relations between the right and the good.

Theorists (such as Rawls and Kant) that prioritise the right develop diverging arguments as to what is just and what is moral, yet they share a fundamental structural similarity viz., the right is represented as being independent of the good, while the good is regarded as anything that facilitates the maximisation of the right (Sandel, 1984, 82 & Roche 1982, 189). The implication of this is that whatever is to be regarded as the good must conform to the boundaries of the right (Rawls 1999a, 21–22). In this way, the right becomes the primary feature or highest principle as the good is subordinated to the right. Inasmuch as theorists that prioritise the right attempt to derive the content of and justification for the right independently of the good (i.e., moral prescription), many theorists rely on objective, impartial, neutral, or universal processes of justification for the right and even try to be impartial about the content of the right itself (Forst 2002, 1–3 & Ricoeur 2000, 39).

In light of this, many theorists that prioritise the right attempt to develop theories that can incorporate as many moral values or ideas of the good as possible since they aim not to presume that some moral values and rational plans of life are more worthwhile than others (Sandel 2006, 150). Hence, they do not develop one singular or absolute account of the good. It is for this reason that Rawls implicitly associates theorists that prioritise the right, such as himself, with theories that do not prescribe moral truth but rather prescribe moral reasonability (Rawls 2005, 194). By this I mean, theorists that prioritise the right generally do not prescribe a comprehensive moral truth as they allow for competing moral ideas to coexist in a society. Therefore, they would more likely define the content of morality not as an absolute truth but as subjective moral values or principles that persons, given their circumstances, would consider to be reasonable moral values to live by or to have in a society.

Freeman (1994, 313) echoes this claim of the priority of the right and the lack of prescriptive moral truth by arguing that, for him, the essential distinguishing feature of the priority of the right and deontological theories, in general, is the aim to argue “for a plurality of intrinsic goods”. It is this intention of theorists who prioritise the right to be neutral or un-prescriptive regarding moral values that thinkers such as Downing and Thigpen (1993, 1046) claim they attempt to evade questions of moral virtues and, instead, stress political virtues.

Given this, theorists that are said to prioritise the right develop a moral or political theory that exemplifies a certain level of objectivity, insomuch as these theorists derive the content of the right independently of the norms and social context to which they apply (Audard 2014, 906). Moreover, the prioritisation of the value of autonomy and the emphasis on freedom leaves open the question of the ideas of the highest good to be given context by individuals (ibid.).

Taking this into account, theorists that prioritise the right are generally associated with either non-comprehensive or partially comprehensive theories, since they attempt to develop theories that do not prescribe all-encompassing moral values or ideals. In other words, the priority of the right is associated with moral pluralism as opposed to moral monism. This feature is associated with liberalism in general and the priority of the right specifically as placing priority on rules of moral obligation that a multiple of comprehensive doctrines can uphold creates a space for diverse moral values, such as on the meaning of life. Rawls, throughout many of his works, in reference to this priority relation, claims that the right establishes the just conditions in which one can then decide on one’s version of the good insofar as this good is compatible with the commonly held conception of the right (Rawls 1999a, 394 & Sandel 2006, 151).

In addition to the above features, Rawls in *A Theory of Justice* (1999a, 21–23) linked the teleological and deontological dispute¹⁵¹ in moral theorising to the debate between the priority relation between the right and the good. In general, the teleological and deontological debate in moral philosophy is centred on the one hand, on whether ethical theories should

¹⁵¹ Deontological and teleological theories differ fundamentally in many respects; discussing all of the ways in which they differ from one another as well as giving a full definition of either is beyond the scope of this thesis. This dissertation will deal with one aspect that contrasts deontological theories from teleological ones. This aspect is the way in which each theory relates the right and the good to each other. I am only focusing on this aspect as this thesis is guided by analysing the complex debate between the priority of the right and the priority of the good (Benton 2018, 66).

prescribe an ideal end or telos such as happiness or pleasure; or, on the other hand, on whether ethical theories should prescribe certain imperatives or duties that individuals should follow independently of the end or outcome that results from them (Audard 2014, 906).

This link between the teleological and deontological theories and the priority of the right and the good is controversial, considering there is debate regarding if all theories that prioritise the right should be considered deontological and vice versa. Freeman (1994, 335) argues that there is a clear distinction between deontology and the priority of the right. The latter, he argues, describes purely the structural relation between the right and the good, while the former specifically addresses the “procedural justification”. Thinkers such as Sandel (1982, 318) and Kymlicka (1988, 21) argue that the priority of the right does not only address the structural relation between the right and the good but also the procedural justification. Rawls in *A Theory of Justice* (1999a, 25–28) links the priority of the right and deontology when claiming that his theory is Kantian or deontological insofar as the principles of the right frame the possible conceptions of the good.

The teleological and deontological distinction can be said to be interlinked but should not be conflated with the priority of the right versus the good debate. All theorists that attempt to determine the right prior to and independently of the good, and then subordinate and confine the good within the limits set by the right (ibid.), share an essential feature of deontological theories. Rawls (1999a, 29) states that ‘justice as fairness’ is a deontological theory, precisely because it argues in favour of the structural feature of prioritising the ‘right’ over the good. This understanding of the link between teleological versus deontological debate and the priority of the right versus the good distinction is reiterated by Ricoeur (200, 37), when he states that the deontological framework “assumes the primacy of the just over the good by substituting the very procedure of deliberation for any commitment concerning an alleged common good.” Hence, Ricoeur acknowledges the commitment to a procedural or neutral methodology for theorists that prioritise the right. Given that the right is developed via a procedural mechanism the right is seen to be constructed as it is decided on first and foremost (ibid., 61).

Additionally, Ricoeur affirms the stance that theorists that prioritise the right attempt to “free the just from the tutelage of the good” (ibid., 37), hence, deriving the right independently of the good. Julian Fink (2007, 144) refers to theories that prioritise the right as developing the right “non-instrumentally”. By ‘non-instrumentally’, she means the right is constructed

independently of an idea of goodness.¹⁵² In this way, the use of non-instrumental is equivalent to the idea that the right is independent of the good, a feature of the priority of the right echoed by other theorists above. With these features in mind, let us consider how Rawls and Kant give priority to the right in their theories.

The early Rawls himself acknowledges that he follows the Kantian tradition of the priority of the right.¹⁵³ On the other hand, the later Rawls works on affirming the priority of the right, while clarifying the complementary nature of the right and the good that I discuss in Section 5.3 of this Chapter. Rawls and Kant affirm the priority of the right insofar as their procedural mechanisms of the original position and the categorical imperative respectively are abstract processes of reason.¹⁵⁴ In the construction of these procedures, both Rawls and Kant emphasise the fact that they exclude the particular features of the persons from the decision procedure itself. Rawls, following the Kantian tradition, places “pure practical reason prior to empirical reasoning” (Rawls 1999b, 503).

For Kant, the moral law is derived from *a priori* reasoning, that the outcome of the categorical imperative procedure is an obligation regardless of an individual’s preferences. Just like for Rawls, the principles of justice are derived from a formal process of reasoning, insofar as they apply independently of contingent factors. For Kant, the moral law must be freestanding of contingent factors of a person’s desires. Similarly, to the moral obligations that result from the categorical imperative, the political values of the first principle of justice (as the outcome of the original position) hold across the basic structure and, as I have argued in Chapter 3, extend across all social associations. Hence the moral law for Kant, and the principles of justice for Rawls, determine the standard of moral behaviour for Kant, and a just society for Rawls. Thus, the moral law and the principles of justice determine the right. This is not to suggest that the content of the right is removed from the good. As shown earlier with

¹⁵² ¹⁵² Since Fink refers to theories that prioritise the right as developing the right “non-instrumentally”, Fink refers to these theories as non-teleological and not as deontological theories, while for Fink the priority of the good is still referred to as teleological theories (Fink 2007, 144). It is not common practise to refer to deontological theories or theories that prioritise the right as non-teleological, for the purpose of this thesis I will follow the current trend and refer to them as deontological

¹⁵³ See: Rawls, 1980. ‘Kantian Constructivism in Moral Theory: The Dewey Lectures’, *The Journal of Philosophy*, 77, 9, pp. 515–572, where Rawls draws the connection.

¹⁵⁴ For a comparison between the original position and the categorical imperative see: Kransnoff, L. 1999. ‘How Kantian is Constructivism?’, *Kant-Studien*, 90, pp. 385–409.

the example of the value of life and the rule of do not kill, goodness and rightness is linked; in Section 5.3 of this chapter, I will emphasise this link. At this point, it is essential to portray the features associated with the priority of the right; another feature is the conception of the person.

The conception of the person for both thinkers is tied to the priority relation of the right over the good. Kant's distinction between the reasonable and the rational is the distinction between the two parts of the self. The rational is associated with empirical reasoning, while the reasonable is associated with pure practical reasoning and the priority he gives to the reasonable over the rational is a feature linked to the priority of the right that Rawls translates to his theory of justice (Rawls 1980, 530). As discussed in Chapter 2, Rawls distinguishes between 'reasonable' as an individual's ability for a sense of justice, while the 'rational' is linked to the sense of the good of persons.

Both Rawls and Kant give primacy to the reasonable or a sense of justice, the ability to listen, consider, and reason objectively (for Kant) or from another's perspective (for Rawls). They both emphasise the faculty of autonomy and rationality as essential capacities of the individual. Even after Rawls's political turn and his move away from the Kantian metaphysical view of the person, and instead adopting the view of the person underlying democratic society, the person's capacity for reasoning from another's perspective still lies at the core of his social contractarian theory of justice and view of the self. In the revised edition of *Political Liberalism* (2005) and *Justice as Fairness: A Restatement* (2001), he focuses on showing the congruence between a sense of justice and the moral reasoning of the person, which I discuss in the following section. In 'Themes in Kant's Moral Philosophy' (1999b, 508), Rawls states:

"Whereas utilitarianism starts with a conception of the good given prior to and independent of the right (the moral law), it then works out from that independent conception its conceptions of the right and of moral worth, in that order. In Kant's view, however, unrestricted rationality, or the rational, is framed by and subordinated absolutely to a procedure that incorporates the constraints of the reasonable. It is by this procedure that admissible conceptions of the good and their permissible ends are specified".

As mentioned above for both Rawls and Kant, their respective procedures required the individual to reason objectively or detached from their contingent features, desires, and goals. This prioritisation of rationality for Rawls (ibid., 510) “displays the distinctive deontological and constructivist structure of Kant’s view”. This is the tradition the early Rawls grounded this theory of justice on and contrasted his theory against classical utilitarianism that develops an opposing structural relation, the priority of the good. Although I qualify my above statement with the early Rawls, the later Rawls did not diverge from this tradition but showed the complementary nature of the right and the good.

In the paragraphs above, I provide a partial view of Rawls’s and Kant’s arguments. I have not provided an account of the thin theory of the good, or how ideas of the “latent democratic ideals” inform the content of the principles of justice or the conception of the person, I will touch on those aspects in the following section. This discussion aims to highlight the key features associated with the priority of the right in both thinkers’ work. This provides the background to then contrast the priority of the right with features of theory design associated with the priority of the good. In the following section, I provide a brief recap of the core theorists of this position labelled in the debate as communitarian thinkers, which we turn to now.

III The priority of the good

The ‘communitarians of the 1980s’ is a term used to group different theorists that criticised liberal theorists in general but, more specifically, critiqued the theory design of the priority of the right for being individualistic (Gutmann 1985, 308–310). These are theorists such as Alasdair MacIntyre, Michael Sandel, Charles Taylor, and Michael Walzer. Before I provide a layout of these theorists’ arguments and criticisms of this priority of the right, I offer an overview of the structural relation of the priority of the good and the subordination of the right.

In contrast to the priority of the right, Rawls states that Aristotle and Bentham are two examples of theorists that prioritise the good (Rawls 1999a, 21–24, Rawls 2005, xxiii–xxvi). Theories that prioritise the good are associated with teleological and consequentialist theories, insofar as they give priority to a set of final ends over rules of obligation. In terms of theory design, theorists that prioritise the good develop the following relation between the right and the good; the good is determined prior to and independently of the right and, as a

result, the right is subordinated to the good as the right is regarded as anything that enables the fulfilment of the good (Rawls 1999a, 19–22). Fink (2007, 144) associates the priority of the good with the idea that the right is defined instrumentally and, hence, right actions or rules are those that help achieve the good. Theorists of the good share the same theory design structure, and although they may disagree about what the content of the good should be, they agree that values or goals should be given precedence in determining moral standards.

In expressing the distinction between deontological theories and the emphasis on the right versus teleological theories and the emphasis on the good, it is important to note that when discussing the debate between the priority of the right versus the good, consequentialist moral theories fall within the framework of teleological theories. This is so because consequentialist theories such as classical utilitarianism define the right as that which aids the realisation of the good (Freeman 1994, 313; Kocaeli 2011, 317; Ricoeur 2000, 28; Ross 2002, 8–9).

W.D. Ross illustrates the separate yet entangled nature of the right and the good in teleological theories such as classical utilitarianism.¹⁵⁵ Ross argues that thinkers such as Bentham, Sidgwick, and Moore explicitly address what they regard as good (viz., those actions that promote the greatest amount of happiness in society), the right then is implicitly interpreted as any act that can help achieve what they consider to be good (ibid., 8–9).¹⁵⁶ Hence, a theorist that is said to prioritise the good is said to develop a moral or political theory that derives what is right from what is good, in other words, what is just from what is moral. Therefore, teleological and consequentialist theories are similar in that the right is

¹⁵⁵ A further area of research post this thesis is to demonstrate why I claim that Mill – although associated with classical utilitarianism – may hold a closer position to Rawls on the continuum. This is due to him having features association with both priority positions.

¹⁵⁶ Kymlicka (1988), in his article ‘Rawls on Teleology and Deontology’, argues in opposition to this view by stating that Utilitarianism is a deontological view insofar as it defines the right not as the maximisation of overall satisfaction but rather as giving fair and equal weight to all person’s goods. Freeman responds to Kymlicka in his article ‘Utilitarianism, Deontology and the Priority of Right’, I agree with Freeman who argues against Kymlicka’s reading. He instead argues that utilitarianism is teleological and associated with the priority of the good since the content of the right in utilitarian theories “tells us to maximise a sum, not to share a distribution. Equality plays no role in defining the substantive content of the principle of utility” (Freeman 1994, 322). See: Kymlicka, W, 1988. ‘Rawls on Teleology and Deontology’, *Philosophy & Public Affairs*, 17, 3, pp. 173–190; Freeman, S. 1994. ‘Utilitarianism, Deontology and the Priority of Right’, *Philosophy & Public Affairs*, 23, 4, pp. 313–349.

always held to contingencies, insomuch as an action or principle can only be viewed as right if it aids in the maximisation of the good (Rawls 1999a, 19–22 & Ricoeur 2000, 39). Due to this, in theories where the good is prioritised, the good is the primary unifying feature and highest principle as the right is dominated by the good. In light of the good being prescribed to persons, in theories that are said to prioritise the good, the method of justification for the good is not associated with neutral justification as with theorists that prioritise the right. This is because theorists that prioritise the good prescribe values, goals, or final ends that need to be understood within the context to which they apply. This is why Rawls associates the theory design of the priority of the right with comprehensive moral doctrines, as these theories often prescribe an ultimate good, the final end goal all persons should uphold (Rawls, 2005, 194). The priority of the good as a form of theory design sets a standard of goodness (i.e., moral excellence) that allows no (or few) competing ideas of goodness to coexist in their constructed theories. Hence, there is one singular comprehensive doctrine of the good, or as Freeman (1994, 313) writes, “a single rational good” becomes the moral ideal and unifying feature of the moral community in such theories. Insofar as this overarching good must be upheld by all, moral and political theorists that prioritise the good prescribe a comprehensive value system.

It is this wide-ranging moral prescription (i.e., an ultimate, higher good or a comprehensive ideal of the good) that then becomes the set moral standard which all other ideas of the good (e.g., good actions here used as a means to an end) and ideas of the right support. Given this, the work of theorists that prioritise the good, are associated with a degree of subjectivity or particularism compared to those subscribing to the priority of the right, as the former places emphasis on the historicity, traditions, or relational ties that bind individuals. In this way, the foundation of the right is conditional on the good, as the rules of moral obligation only derive their purpose, insofar as they are bound to the historicity, traditions, or relational ties of the persons or society they apply to. In other words, the right in theories that prioritise the good is dependent on the contextual circumstances of the individual or society. This means we discover what is right and wrong actions, insofar as these actions facilitate or hinder said individual with the possibility of achieving the good (Ricoeur 2000, 61). In Section 5.3 of this chapter, I demonstrate how Rawls’s theory of justice is dependent on the contextual circumstances of a liberal democratic society. For now, I continue to explicate the features associated with the priority of the good.

Allow a short example to illustrate my point. In the classical doctrine of Utilitarianism by Jeremy Bentham, Bentham chooses to answer first the question of what the good life for human beings is. Once he determines that maximising happiness and minimising pain should be the guiding maxim for all good actions, he then derives what actions and principles can be considered right. For instance, if the action of torture aids in the maximising of happiness for the majority of persons, torture could be morally permissible. As such, the justification for the act of torture depends on the content of the good. This example shows how the good for Bentham determines the conditions for what actions can be considered just or unjust. In the above example, as Bentham prescribes, maximising happiness as an overarching final end of all persons.

Considering that I have provided the outline of the theory design associated with the priority of the good, I now set about demonstrating why theorists of the good critique the possibility of deriving the right independently of the good. For this discussion, I briefly present the communitarian theorists views and overlap, insofar as they share similarities in the preference they give to the good, and the objections they level against the theory design of the priority of the right. In the following section, I address Rawls's position and if my interpretation of Rawls can respond adequately to these critiques.

The primacy of the right over the good is based on a certain conception of the self, which Sandel (1982, 19) claims misrepresents the nature of personhood. As a result, Sandel contends that this priority is an inconsistent way to build these moral categories. The "unencumbered self" is the term Sandel (1984, 83) uses to describe this conception of the self as existing independently of the historical and cultural context the individual lives within. According to Sandel, valuing the self only based on its capacity for moral autonomy indicates that the self and the environment in which it exists are somewhat disassociated (Sandel 1982, 19 & Sandel 1984, 86). Sandel finds it problematic to reason about principles of justice from a detached perspective whereby the principles of justice are determined prior to and independent of the desire, preferences, and social, economic, and political contexts of the persons to which they apply. For Sandel, these contingent factors are necessary factors that need to be taken into account when determining the principles of justice or the moral worth of an action (Sandel 1982, 22).

Sandel (1982, 176-183) argues that the priority of the right promotes an "unencumbered" version of the self, devoid of all societal attachments, and independent of communal ties. The

freedom and rationality of this self enables the right to be constructed and the good to be individually chosen and not enforced. Sandel insists that this independence of the right (and the self) from communal obligations and societal attachments is problematic as abstracting the question of justice from its context requires justice to be removed from the particular circumstances of society to which it applies. In other words, the institutions of justice are prior to and independent of the good of persons. This could result in principles of justice not being congruent with the social aims of persons. This incoherence for Sandel contradicts the freedom of these persons since he argues that persons would be better served in a society where the institutions of justice are developed with the social ends of persons in mind.

For Sandel, the self is first and foremost a historical self as opposed to the rational self, associated with the theory design of the priority of the right. Sandel claims that theorists such as Rawls present communal and associative ties as voluntary, to the degree that the ability of rational detachment in developing principles of justice implies that they have no moral values, goals, ends, or ties that are primarily constitutive to their identity (Sandel 1984, 86–87). Sandel disagrees; for him, the conception of the person is tied to tradition, history, and affectionate relations, the individual is inextricably bound to circumstances that determine their identity. He contends that this idea of the liberal self, whereby it is free in the sense that it can go back and forth between attachments, is problematic (Sandel 1982, 20). The kinds of attachments Sandel refers to are the social features of a person such as their moral and historical tradition, conceptions of the good, and their role within society (Sandel 1984, 87).

Sandel sees persons as situated selves first and foremost, where the principles of justice must mirror this situatedness, by acknowledging their particular social injustices, traditions, and aspirations of the persons that are to uphold these principles. Thus, for Sandel, affectionate ties, societal goals, and common values and traditions must inform the right. From the above, one can see how and why he argues against the theory design of the priority of the right or what he terms “politics of rights” for a “politics of the common good” (Sandel 1982, 17).

Another thinker associated with the priority of the good is Alasdair MacIntyre (2007, 19). MacIntyre critiques the moral relativism that results from liberal society. Liberal society is characterised by moral pluralism since the state does not prescribe comprehensive moral doctrines to citizens. I discussed this feature and Rawls’s justification for it in Chapter 2. Liberal thinkers take moral pluralism as a premise of a just society, it is this premise that MacIntyre critiques. For him, the rise of moral pluralism has led to the collapse of moral

culture in contemporary liberal democratic culture due to the impossibility of moral consensus as a unifying feature of society (ibid., 18–19). The result is that liberal society, or the theory design of the right, is associated with the neutrality of the good, as individuals decide what is and is not of moral value. Moral pluralism as a premise leads to issues of moral relativism for MacIntyre since moral pluralism enables conflicting moral claims in society without there being an overarching moral framework in which to evaluate them. The result is liberal societies are then unable to settle moral disagreements because they lack an overarching moral normative framework for doing so (ibid., 32).

In *After Virtue* (2007, 232–233), MacIntyre states that Rawls views “individuals as primary and society as secondary”. This is the result of Rawls deriving the principles of justice via an impartial perspective of the original position. MacIntyre is critical of making individuals primary, as acknowledging their autonomy without representing their historical situatedness does not adequately account for the individual as a social being. Thus, the moral and social bonds individuals have are not taken as necessary requirements in this rational process. This is a result of not giving the good primacy in theory design. In contrast, for MacIntyre, the moral and social bonds of individuals are the necessary moral foundations needed to determine what social goods are important and what their just distribution is. Thus, for MacIntyre, following in the Aristotelian tradition, justice is a result of identifying the common good that binds all citizens. Liberal society lacks the moral camaraderie, which permeates societies where members recognise a common good because it confines the good to the private sphere (ibid., 156). Thus, moral decline is inevitable since citizens have no overarching moral framework to provide guidance.

MacIntyre, with his notions of narration, tradition, and practice, demonstrates why social relations are an integral element of the individual and justice. The moral identity of a person is informed by their historical setting. The choices they make, and the goals they have, cannot be separated from them or from how they reason. (ibid., 243). Similarly, justice and its moral principles cannot be thought of independently from the paradigm of the time in which they are created. The communal tradition and practices of the time need to be mirrored in the principles of justice. By choosing to engage in some behaviours over others and to acquire some virtues over others, the individual shapes their moral identity in relation to the communal tradition in which it is located (ibid., 223). In this brief discussion, one can see

how and why MacIntyre's argument stands in direct contrast to the liberal paradigm¹⁵⁷ that develops justice independently of tradition and social context. I have not addressed how MacIntyre's view of liberal theory changes in *Whose Justice, Which Rationality* (1988), in the following section I discuss this. In this upcoming section, I also address how Rawls constructs a just society on the historical practices of democratic society and, thus, justice is not independent of a social context. For now, I am demonstrating MacIntyre's argument for why goodness should be prescribed and given preference to the right.

Taylor and MacIntyre echo the similar sentiment that determining the right independently of the good is problematic since the moral neutrality of this position undermines an individual's moral and historical situatedness in the world. For Taylor (1989, 64), political institutions need to align with and promote the hyper-goods of society. Hyper-goods are the moral culture of a society. In society, 'hyper-goods', according to Taylor, are a source of contention since they are a by-product of societal construction and, consequently, change in response to historical circumstances. They serve as a "universal ethic", a focal point around which moral culture revolves (ibid.). Taylor does not mean by "universal ethic" that 'hyper-goods' represent an absolute moral truth but rather that it is a common good that serves as a unifying symbol of the contemporary historical moral context (ibid., 64). Thus, the idea of having a freestanding theory of justice that does not prescribe a comprehensive doctrine is not possible as the role of political institutions is to help foster the 'hyper good' of society (ibid.). In other words, the theory design of the priority of the right, insofar as it presents rules of obligations that are independent of moral standards of value, is not possible for Taylor. Hence, for Taylor, the right should depend on the good, insofar as the institutions and principles of justice should help realise, reinforce, and continue the moral culture of a society. Allow me to unpack this idea briefly.

Taylor critiques the idea that the rules of obligations can be determined from a rational objective procedure, a feature associated with the theory design of the right. Taylor disregards the notion that there is an objective procedure of rationality that we can rely on that is independent of one's moral intuitions. Taylor claims moral intuitions are innate views

¹⁵⁷ MacIntyre (2007, 51) refers to thinkers such as Kierkegaard, Diderot, Hume and Smith, all who were part of the same theoretical paradigm that strove for objective rational justification. Insofar as Rawls's theory of justice relies on an objective rational method of justification, MacIntyre's criticisms of this theoretical paradigm can be extended to Rawls's theory justice as fairness.

of what persons regard as right or wrong or good or bad. The three axes of moral intuitions are foundational to moral reasoning since they shape one's moral outlook, such as how one views other persons, what one views as a conception of the good, and what one's final ends of highest values are (1989, 14–19). Thus, for Taylor, one's identity is determined by their relation to the moral horizon they are embedded in (1989, 27):

“Rather the claim is that living within such strongly qualified horizons is constitutive of human agency, that stepping outside these limits would be tantamount to stepping outside what we recognise as integral, that is, undamaged human personhood”.

For Taylor, the social and moral attributes of a person are not contingent features, whereby we can think of an individual as having an identity apart from these characteristics, but, for him they are essential to the identity of a person and the procedure of moral deliberation, as it is only from this situated horizon in which one can find meaning and understand which goods to give preference to (ibid., 29). Taylor describes a hermeneutic circle to explain the feedback loop between an individual's moral presuppositions and their historical setting. The historical period, geographical location, family life etc. inform one's moral intuitions and, at the same time, it is a person's moral intuitions that help to inform their understanding of and relation to their world. This circular movement accounts for how moral intuitions can be biased and revised. Thus, Taylor develops a relational view of personhood that cannot reason removed from this hermeneutic circle (ibid., 34). Similarly, to MacIntyre and Sandel, Taylor rejects the idea of an autonomous rational self that can reason from the detached position of rational reflection. Instead, these thinkers share the view that the rule of obligations has to stem from the moral values embedded in one's tradition and community; without this, the right does not have moral worth. Taylor in *Sources of the Self: The Making of the Modern Identity* (1989, 89) echoes this conclusion:

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

I return to the significance of this quote and my interpretation of Rawls in the following section, where I show how justice for Rawls is a unifying symbol of the good that is characterised by the features of the contemporary historical moral context of liberal democratic society. For now, I continue this discussion of the priority of the good with Walzer and his argument in favour of a ‘thick’ theory of justice. Walzer uses the notion of thick to denote the importance of contextual features, communal obligations, and historical traditions as essential to reasoning about justice. Unlike the other communitarian theorists, Walzer does not criticise the rational individual conception of personhood associated with liberalism and the priority of the right. His focus is not on persons, but on conceptualising goods and the distribution of these goods in line with contingent aspects of the different spheres of society.

Walzer takes aim at the impartial approach of Rawls’s theory design, whereby the political institutions and distribution of goods are based on an impartial procedure. For him, principles of justice and distribution of goods based on ‘minimal’ moral argument result in these principles being hollow, insofar as their justification is devoid of cultural context (1994, 7). In *Thick and Thin: Moral Argumentation at Home and Abroad* (1994), Walzer claims that constructing principles of justice from an independent or an *a priori* setting (such as the original position or the categorical imperative) is problematic as the principles of justice and its institutions should be constructed with the context-specific features of society.

Walzer uses the terms thick and thin to explain the dualism present in moral reasoning between thin, universal procedural justifications and thick culture-specific contextualisation of justice (ibid., x–xi). He argues for a thick method of justification. By “thickness”, he means to suggest that justice and the distribution of goods should be characterised by disagreement relative to the culture, community, and tradition that they stem from and apply to (ibid., 3). Political principles cannot be formed from an abstracted standpoint as the moral basis for political principles is ingrained in the morals and culture of a particular community; this is the idea of ‘maximal meaning’, acknowledging that the meaning of goods is embedded in this context (ibid., 2/11–12),

Therefore, the universal detached method of reasoning about principles of justice, that Walzer critiques, is a critique against the theory design of the priority of the right, since a feature of this position is the view that rules of obligation can be derived independently of the context to

which they apply. This tension between the two forms of theory design between the priority of the right versus the good is implicit in the below quote:

“My argument is radically particularist. I don’t claim to have achieved any great distance from the social world in which I live. One way to begin the philosophical enterprise – perhaps the original way – is to walk out of the cave, leave the city, climb the mountain, and fashion for oneself ... an objective and universal standpoint. Then one describes the terrain of everyday life from far away, so that it loses its particular contours and takes on a general shape. But I mean to stand in the cave, in the city, on the ground. Another way of doing philosophy is to interpret to one’s fellow citizens the world of meanings that we share” (Walzer 1983, xiv).

For Walzer, the Rawlsian idea of primary goods is hollow, since they are abstract goods, they have universal application and lack a connection to the context and person that they apply to. In *Spheres of Justice* (1983, 5), Walzer argues that a universal detachment where individuals reason from an impartial perspective is not the natural position for reasoning about justice, rather individuals would be able to reason from a position of the common good of their society. By relying on their knowledge of their cultural context, social values and community traditions to determine which principles of justice and methods of distributing goods would be appropriate. This form of reasoning for Walzer does not lead to individuals reasoning about justice from their particular interests as they are reasoning with their fellow citizens’ goods in mind.

A further point of Walzer’s argument regarding the contextualisation of the principles of justice and the just distribution of goods is to acknowledge his view of the pluralism of goods. For Walzer, goods gain their meaning and worth in a social tradition, a person reasoning removed from this tradition would not be able to figure out which goods are valuable (ibid., 7–8). Walzer uses the explanation of bread as a good to show how bread has a plurality of meanings relevant to its context (ibid., 8). Therefore, for him, the distribution of goods is just or unjust in relation to the meaning of the good. For example, in South Africa, health care as a good needs to be understood and distributed in relation to citizens’ social, economic, and political current climate and historical context. This would mean that the meaning of health care and the distribution of it as a good could not be compared to health care in the United States as the social context would result in a different meaning of health care and its distribution. This example highlights why for Walzer universal goods are hollow,

their detachment from their social context will result in these goods having incorrect or meaningless applications as their distribution procedure has not accounted for as their social features (ibid., 320). Due to this, Walzer emphasises the rules of the distribution of goods being dependent on communal ideas and moral values. In thinking about theory design, therefore, Walzer is associated with the priority of the good, as the good is what gives meaning and values to the right.

With the above discussion in mind, one can see that theorists associated with the priority of the good argue for a necessary dependence between the right and the good, whereby they argue that morality is the constituting factor in determining justice. Thus, this position of the debate holds that norms and societal values are essential in determining the content of the right. The implication of this is theorists that prioritise the good develop conditional or subjective methods of justification for the right as they determine actions to be right or wrong based on the context in which the right applies.

In other words, in justifying if an action or principle is right, these theorists generally rely on a conditional method of justification as they analyse if the right action would enable one to realise the good. If it does, then this action is deemed right. If it does not support the realisation of the good, then it is deemed wrong. In this way, right action is based on conditional reasoning. Therefore, the priority of the good can be said to be characterised by *a posteriori* reasoning and not *a priori* reasoning, meaning that the justification for the good is dependent on empirical reasoning, since the good is determined by subjective, conditional, or context-dependent forms of reasoning (Benton 2018, 77–80).

It is this reliance on subjective, empirical, or conditional reasoning (explained above) that is considered a drawback of the priority of the good, for theorists that prioritise the right, as the right are held hostage to contingencies (i.e., the right is contingent to the good) (Rawls 1999a, 25 & Roche 1982, 189). For instance, with Bentham's utilitarianism, any right action or principle of justice is contingent on the good. If the content of the good changes, then so does the right. Returning to the example earlier in this section, since maximisation of happiness is the moral good for Bentham, then the right is context-dependent to the degree that it can result in the maximisation of happiness. If, in some circumstances, the action of a murder could minimise happiness then it is deemed wrong, such as if the death penalty were to cause more social upset than social support (then removing the rule of capital punishment would be deemed right in light of maximising happiness). In contrast, in some cases maximising

happiness (the good), can be seen to be a rule of obligation, insofar as the rule could help one to achieve the good. The right could be prescribing actions such as killing a kidnapper to save ten hostages. Thus, the right action and the principle of justice associated with the good, in this case, are contingent.

Since theorists that prioritise the good enforce an ideal of the good that they consider to be morally excellent, liberal thinkers that prioritise the right, such as Rawls, assert that grounding the content of the right on the good could be unjust as it does not take into account the right of liberty of conscience and the necessary social condition of moral pluralism (Sandel 2006, 154, Rawls 2005, xxvi). Instead, imposing one comprehensive doctrine of the good as the moral foundation for political life would lead to political society not being inclusive of opposing moral ideals.

Rawls's aim, after his political turn, was precisely not to promote a comprehensive notion of the good to avoid these dangers. Hence, political liberalism for Rawls is attractive as it does not prescribe comprehensive moral standards of excellence. In its place, it creates room for individuals to freely choose opposing ideals and doctrines of the good. Thus, the priority of the right and the promotion of the neutrality of the good allows for a just society, which for him is marked by reasonable moral pluralism. With that said, as shown in Chapter 2, he does promote selective comprehensive notions of the good. But, as demonstrated in Chapter 3, justice as the first virtue of all social institutions does imply that he restricts a citizen's moral choice. Reasonable moral pluralism presupposes that Rawls is not open to all possible moral doctrines as possible reasonable choices for citizens in his just society; this will be discussed in the following section.

Hence, I argue, theorists that prioritise the good are critiqued (by theorists that prioritise the right)¹⁵⁸ for not developing independence between the right and the good in their theories. Forst in *Context and Justification* (2002, 3) refers to communitarian thinkers as developing context-immanent theories since their focus for the justification of justice or moral principles depends on the context, tradition, or societal circumstances. Forst contrasts context-immanent theories with context-transcendent theories. The latter is developed by theories that determine a justification for moral and political principles from a universal or detached position. I point

¹⁵⁸ For an example of this critique, see: Sandel, M. 1984. 'The Procedural Republic and the Unencumbered Self', *Political Theory*, 12, 1, pp. 81–96.

to Forst's distinction between methods of justification for 'context- immanent' and 'context-transcending' to show how these binary methods of justification sum up the contrast of the priority of the good versus the right, whereby the theory design of the good, relies on the historical, communal, and social features of the individual to justify the content of the right. In comparison, the priority of the right relies on an impartial or detached procedure from the social context that they apply to. Thus, the theory design of the right can be linked to Forst's distinction of context-transcendent theories.

It is this hope of the neutrality of the good, that thinkers such as MacIntyre, Sandel, Taylor, and Walzer find problematic since this lack of moral unity undercuts the moral fibre of society (as discussed above). That is to say, the fact that theorists that prioritise the right neglect the good by not prescribing a common good to create moral cohesion can lead to the detriment of society, insofar as it can lead to moral degeneration as MacIntyre suggests (MacIntyre 2007, xv). Arendt associates this lack of moral fibre as constitutive of a perverse society when she wrote, "What makes mass society so difficult to bear is not the number of people involved, or at least not primarily, but the fact that the world between them has lost its power to gather them together, to relate and to separate them" (Arendt1998, 52). I show in the following section Rawls argues that the prioritisation of the political virtues provide the moral cohesion necessary for a just society to be possible.

This conflict, regarding which position (i.e., the priority of the right or the priority of the good) is better equipped at addressing questions of morality and justice, has reared itself in many different theoretical forms. As stated earlier, one of the more recent forms is the liberalism and communitarianism debate. This debate of procedural methods of justification versus comprehensive metaphysical or philosophical moral value systems has been a conflict in moral and political philosophy since Plato¹⁵⁹ and Aristotle¹⁶⁰. This binary debate has two dominant approaches to questions of justice and morality, which have been to either justify principles of justice in terms of a universal method of justification or justify moral and just principles in terms of particular moral values or ideals that are contextually relevant and subject-specific. The former approach is associated with the priority of the right, while the latter is a feature of the priority of the good. Hence, while thinkers such as Aristotle and

¹⁵⁹ See: Plato. 1974. *Plato's Euthyphro: Apology of Socrates; and, Crito*, edited by J. Burnet. Oxford: Clarendon.

¹⁶⁰ See: Aristotle. 2014. *Nicomachean ethics*. edited by Crisp, R. Cambridge: Cambridge University Press.

Arendt are not associated with the priority of the right versus the good debate, the underlying tension they bring up in their works (as illustrated in the above quote), namely, the universality versus particularity of judgements of justice and morality, is a central dividing point in the debate between the right and the good.

Communitarian thinkers, such as MacIntyre, Sandel, Taylor, and Walzer are associated with the particular method of justification, as we have seen above, advocating for a societal common good, since the need to prescribe certain moral values arguing for the right to be context-specific and, hence, critiquing the possibility of a neutral procedure of justification and the detached self, are labelled as communitarian thinkers by the philosophical community (Sandel 2006, 152). On the other hand, liberal thinkers (i.e., Kant, Rawls, and Nozick) are associated as theorists that prioritise the right, considering that they emphasise either a universal or detached process of reasoning. They argue in favour of prescribing rules of obligations that are derived from a neutral method and then can be applied to the social context.

The purpose of this brief discussion of the universal versus particularistic debate and the more lengthy communitarian-liberal debate,¹⁶¹ is to illustrate how this tension between theorists that prioritise the right versus those that prioritise the good has been conceptualised in current moral and philosophical thought. This binary version of the debate described above results in these seemingly caricatured positions as extremes that are in direct conflict which I find problematic, as it can lead to oversimplification of nuanced aspects of theories to fit theories into these positions. In the following section, I address why a continuum would better account for illustrating the complexity of the relations between the right and the good.

5.3 The continuum

Gutmann in ‘Review: Communitarian Critics of Liberalism’ (1985, 317) acknowledges this binary representation of the debate and its problematic consequence:

“... either justice takes absolute priority over the good or the good takes the place of justice; either justice must be independent of all historical and social particularities

¹⁶¹ For an overview of the liberal communitarian debate see: Gutmann, A. 1985. ‘Communitarian Critics of Liberalism’, *Philosophy & Public Affairs*, 14, 3, pp. 308-322., and Walzer, M. 1990. ‘The Communitarian Critique of Liberalism’, *Political Theory*, 18, 1, pp 6–23.

or virtue must depend completely on the particular social practices of each society; and so on. The critics thereby do a disservice to not only liberal but communitarian values, since the same method that reduces liberalism to an extreme metaphysical vision also renders communitarian theories unacceptable”.

Before I address how reconceptualising the priority of right and the good as relations on a continuum can eliminate this dualism, I first expand on why this dualism is problematic. Representing the priority of the right and the priority of the good as rigid dualistic categories, where the priority of the right and the good are two opposing camps, develops a twofold problem. Firstly, presenting the debate as two distinct opposites whereby theorists are categorised into either extreme is indicative of a false dichotomy, viz., as if the priority of the right and the good are mutually exclusive positions and, as such, theorists are categorised into either one or the other extreme alternative. Understanding the priority of the right or the good in terms of this static dualism places us in danger of reductionism. In short, the danger of reducing complex theories to one or two aspects of qualities of the theories themselves is dangerous because it leads us to create a simplistic misconception of the theory itself as we highlight some aspects that fit well into the dichotomised relation of the priority of the right and the good and neglect other nuanced aspects that do not fit in either category.

Secondly, this simplistic dualism perpetuates the destructive notion of fitting complex moral and political theories within an inflexible construct. By trying to fit complex theories within a static structure, we miss the nuanced relationship between the right and the good that theorists develop in their moral and political systems. We should aim to expose the nuanced relationship theorists develop as missing it implies that we either misunderstand the theory itself or have oversimplified the theory to fit into a compact scheme. By showing the nuances, we show the complexity of the theory and, more importantly, in the context of this thesis, show the complex relationship thinkers such as Rawls develop about relations between morality and justice.

The supposed dichotomy of the priority of the right versus the good cannot take into account the later Rawls, as he falls partially in both parts of this dualism, as I illustrate later on in this section. This dualistic distinction is ineffective in accurately depicting the complementary nature of the right and the good in the later Rawls. It is ineffective as it cannot account for the nuanced relationship theorists (such as Rawls) develop between features of the self, the role they give to rules of obligations, the moral value system they develop, or the method of

justification they emphasise, whether that is a contextual, objective, or a combination of both decision-making methods. Thus, it is this binary characterisation of the debate that has led to the inadequacies of the debate itself and, as a result, the debate is currently seen to be exhausted because it is at an impasse.

To avoid these above-mentioned problems and revive discussions about these issues, I suggest reconceptualising the relationship between the right and the good as fluid positions on a continuum. By reconceptualising the debate between the right and the good as distinct categories, these categories allow for degrees of variance between the two traditional static positions (i.e., the priority of the right versus the priority of the good). Allowing room for variance is important as it helps solve the two issues mentioned above namely, the problem of reductionism and the neglect of nuanced aspects within theories. By acknowledging variance in this new tool of analysis (i.e., the continuum), we can use this tool to break down and expose the complex relationship theorists develop between the right and the good.

By reconceptualising the debate in terms of a continuum, we can solve these two problems by firstly not oversimplifying theories, secondly, showing how certain theories could have aspects of both positions, and thirdly, illustrating those certain theories in the same camp (i.e., the priority of the good or the right) could share some similar aspects yet also hold distinct views of the right and the good. Hence, I maintain that the relation between the priority of the right versus the good should be viewed as a relation of gradations on a continuum and not static dualistic categories. Allow me to break down the notion of the continuum in more detail.

I The right and the good as ranges on a continuum

The notion of the continuum between the priority of the right and the good could entail the following features: The extremes of the continuum would be the *ideals* of the priority of the right on one end, and the priority of the good on the other end. How each theorist constructs their theory and gives content and prescribes conditions of justification and realisation to the right and the good, will determine what structural relation they develop between the right and the good. This illustrates the idea that opposing moral and political theories can occupy different positions on the continuum, yet still being aligned with a specific camp (i.e., the priority of the right or the good). It is this relation between the priority of the right and the priority of the good as representing two distinct, yet adjacent positions, where there exists a

potential for a gradual movement for moral and political theorists to construct theories with more or fewer qualities of either position, that I have in mind when introducing the notion of a continuum.

For instance, some of the features associated with the priority of the right would be the theorist striving for objective moral or political principles. In striving for objective principles theorists often rely on *a priori* reasoning or the development of categorical laws such as Kant in his construction of the categorical imperative. Others develop an objective method of evaluation from which we can deduce objective principles, such as Rawls in his construction of the original position. Yet other thinkers argue for a minimal moral prescription, inasmuch as the kinds of goods, values, and laws that can be prescribed can only be political so as not to infringe on the liberties (i.e., liberty of conscience) and freedoms of others; Nozick held this position of the minimal state.¹⁶²

What these three theorists share in common in terms of the priority of the right, is that they share the view that the right should be prioritised and derived independently of ideas of the good. Thus, these theorists give more weight to principles of justice than to prescribing a comprehensive notion of the good. As a result, the kinds of goods that can exist can be multiple and diverse so long as all contrasting ideas of the good within society do not undermine the prioritisation of individual rights or the other aspects of the content of the right. Insofar as theorists share this stance in their theory design, they would be positioned closer together on the continuum. Yet they would occupy different positions within the debate (as such, along the continuum) as their articulation of features associated with the priority of the right in their theory design is different.

In contrast, theorists that prioritise the good share the consensus that the common good or the highest good should be determined independently first and that the content of the right should be an expression of and enable the realisation of these moral values (Audard 2014, 907). Therefore, for theorists of the priority of the good, rules of obligations are instrumental, insofar as they are valued and implemented in order for the prioritised version of the good to be realised.

¹⁶² See: Nozick, R. 1974. *Anarchy, State and Utopia*. New York: Basic Books, Inc.

Although these theorists hold this consistent position, their formulation of this position in the construction of their theories is different. For example, some aspects of the priority of the good would be the creation of contingent ideas of justice, as Michael Sandel (1984) argues, by acknowledging the historicity of the self, or much like Michael Walzer (1994), some theorists could emphasise the subjectivity or relativistic nature of justice; whereas Alasdair MacIntyre (2007) focuses on the importance of a unifying moral ideal or end goal for society. Yet other thinkers, like Charles Taylor (1989), highlight that an individual is constituted by their social and political environment. The overarching stance these theorists of this ‘category’ share is that trying to derive an objective set of principles of justice from a detached hypothetical procedure (independently of the context to which the principles themselves apply) is problematic, specifically because it disregards historicity as a constitutive feature of individuals and societies and constitutive of concepts such as justice and morality.

Although these theorists hold the consistent position that the good must be determined prior to the right, the aim of their theories and the formulation of their positions is different. For example, for Sandel, it was important to show how the individual is constituted by her social and political environment and, thus, his argument aimed to critique the rational detached liberal self (Sandel 1984, 81–96). MacIntyre’s project centred on critiquing Western culture, during which the liberal self and moral pluralism were targets to show the moral decline of Western culture, while emphasising the necessity of an Aristotelian return to justice as the common good as shown in *After Virtue* (2007). Similarly, Taylor criticises Western culture and the tradition of reasoning from an impartial perspective, which cannot account for the historical and social situatedness of moral reasoning, the three axes of moral intuitions and the hermeneutic circle are the foundation of justice as shown in ‘Atomism’ (1985, 187–210). Walzer does not critique Rawls’s self or Western culture directly, instead, he aims to show why rules of distribution and the goods of society can only be understood within the social and cultural context that they are to apply to. Walzer rejects the impartial objective procedure for determining principles of justice, thus his position stresses the subjectivity or relativistic nature of justice and the meaning of goods as illustrated in, *Spheres of Justice: A Defence of Pluralism and Equality* (1983).

From the brief description above of the attributes associated with the categories of the priority of the right and the good, one can see that theorists could incorporate a number of these

attributes, while others could focus on solely one attribute. Nonetheless, theorists develop nuanced methods and arguments in which they combine some of these attributes. It is the various nuances in the theory design of moral and political philosophers that emphasise different features and relations of the right and the good that give each moral and political theorist their distinct position on the continuum, while still being associated within the same overarching category (i.e., the priority of the right or the priority of the good).

In the following section, I demonstrate further how a binary presentation of the relationship between the right and the good cannot account for how Rawls simultaneously relies upon an objective method of reasoning, prioritising principles of justice, while embedding the principles in the historical tradition of a democratic society, and presenting justice as the common good all Rawlsian citizens share. These latter features, as shown above, are associated with the priority of the good, while the former is associated with the priority of the right. In order to account for this nuance in theory design, reconceptualising the relationship between the right and the good as ranges on a continuum can illuminate the intricacy of how a theorist connects the right and the good. A theorist placing more emphasis on an objective method of evaluation would push a theorist closer towards the ideal of the priority of the right on the continuum. While a theorist that chooses to construct their moral and political doctrines in line with prescriptive moral ideals would push a theorist towards the ideal of the priority of the good on the continuum. It is at the positions between the two extreme ideals of the continuum that I argue most of the political and moral theorising takes place, hence most theories would be positioned along the continuum than at the two extreme ideals of the continuum.

It is this positioning along the continuum that I term as gradations on the continuum of structural relations between the right and the good. I refer to it as such as theorists (considering the attributes of their theories) move towards either side of the continuum in relation to the categories that are given more emphasis, which is a result of their theory design. As stated in the beginning of this section, the extremes of the continuum would be the traditional ideals of the priority of the right (determining the right prior to the good) on one end, and the priority of the good (determining the good prior to the right) on the other end. By traditional ideals, I mean to suggest that the endpoints of the continuum are placeholder positions for the classic understanding of the expression of the priority of the right and the priority of the good as they have been represented in the current binary debate.

I argue that it is at the positions between the two ideals of the continuum that I argue most of political and moral theorising takes place since theorists represent the priority relation they fall within differently, depending on what attributes they emphasise in their theory design. Theorists develop nuanced methods and arguments in which they combine some of these attributes. It is the nuanced method in which theorists relate the right and the good in their theories that give each moral and political theorist their distinct position on the continuum, while still being associated within the same overarching category (i.e., the priority of the right or the priority of the good).

The purpose of introducing this notion of a continuum is to demonstrate that two theories that share the same attributes do not necessarily imply that they exemplify these attributes to the same degree. Take for example the attributes of sharing an objective method of evaluation or sharing prescriptive moral ideals. The former attribute would associate a theory (generally speaking) with the priority of the right, while the latter attribute would be linked to theories that prioritise the good (as mentioned above). It is precisely this degree of difference and similarity between attributes associated with the two categories that can be better understood and investigated via the notion of a continuum since it allows room to express features of theories that do not quite fit within either position. This is essential, as taking into account nuances between the attributes of the priority of the right and the good can help revive discussions on theories, such as in the case of the later Rawls, I argue that the complex relation he develops between the right and the good places him between the two binary ideals.

In the following section, I compare John Rawls and Immanuel Kant (as theorists that are said to prioritise the right) along the continuum, to show how and why they would not occupy the same position. However, for now, it would be pertinent to further discuss the kinds of attributes associated with both camps and how having certain degrees of these attributes could alter the positioning of theories along the continuum.

When we argue that a theorist prioritises the right, by following this approach we analyse and associate a moral and political theory with *degrees of* objectivity and a neutral method of justification. Considering this, these theories often represent principles of justice as an obligation as one is duty bound to abide by them. Furthermore, the priority of the right is associated with *degrees of a priori* reasoning, considering that these theories are often associated with developing principles that should have some form of universal application

and, hence, are derived independently of empirical or circumstantial factors. Thus, these theories are associated with *lower degrees of* comprehensiveness, considering that they are less prescriptive of the good than those theories that prioritise the good. This is due to the objective method of justification and the fact that most theories that prioritise the right encourage moral freedom (i.e., leave it up to the individual to decide their rational desires, goals, and meaning of life). Hence, as moral freedom is encouraged, theorists that are associated with the priority of the right are generally not associated with prescribing a moral truth as, what is morally permissible in a society is not dependent on one singular comprehensive doctrine of the good, as mentioned in the previous section.

In contrast to this, when we argue that a theorist prioritises the good, we identify a moral and political theory with prescribing the concept or characteristics of moral truth, as what is morally acceptable in society is a result of and, hence, derived from, one singular comprehensive doctrine of the good (Rawls 2005, 19). Given this, theories that prioritise the good are associated with *higher degrees of* comprehensiveness, since they prescribe specific comprehensive moral values. As a result, the ideals of the good are antecedent moral prescriptions that individuals should follow, implying that persons themselves can either not develop independent ideas of the good, or those ideas of the good they wish to pursue must fall in line with the overarching prescribed ideals. Due to this, theories that prioritise the good are linked with prescribing *higher degrees of* moral prescription. Moral prescription implies that the justification of the good is based on *higher degrees of* empirical or contingent reasoning as it is context-dependent. As a consequence of this, theories of the good are associated with degrees of particularism, *degrees of a posteriori* reasoning and, hence, *degrees of* subjectivist and relativist reasoning. The implication of developing a comprehensive account of the good leaves less room for individuals to decide on their own conceptions of the good, hence, it can be seen as a suppression of moral autonomy (Audard 2014, 906).¹⁶³

I have deliberately chosen to express the priority of the right and the good as exemplifying *degrees of* certain attributes such as objectivity and subjectivity rather than labelling each category (i.e., the priority of the right or the good) with these static terms. If I were to say that all theories in the opposing camps are either objective, universal, and impartial on the one

¹⁶³ In my post-doctoral research, I will expand on this conception of the continuum, by characterising it as a multidimensional continuum in which I use covariance to explain the relationality right and the good.

side, and subjectivist and comprehensive on the other side, this would imply that all theories associated with either the category of the priority the right and the good would uniformly share the associated features. I argue that this is generally not the case. The notion that theories in the same categories could have diverging degrees of similar attributes is best demonstrated with the qualifier ‘degrees of’. In addition to this, a theory that is said to prioritise the right could contain both attributes of an objective method of justification and yet contain attributes of degrees of comprehensive moral prescription. It is this nuanced relationship within certain moral and political theories that can be better analysed and understood via the qualifier ‘degrees of’.

Therefore, without using the qualifier ‘degrees of’, using the terms ‘universal’, ‘objective’, ‘particularism’, ‘comprehensive’, and ‘moral truth’ is misleading as these attributes as uniform features do not convey or demonstrate the true complexity of the theories themselves nor their placement in the camps of the right and the good (as demonstrated in the above example). It is for this reason, that I (re)phrase the debate between the right and the good in terms of ‘degrees of’ and claim that they should be seen as two fluid ranges on a continuum. It is the only way in which to effectively illustrate the nuanced nature of the right and the good when analysing and comparing competing moral and political theories. Additionally, it enables one to zoom in on the complexity between theories by analysing the attributes shared among theorists of the same categories versus comparing and examining attributes that may be shared by theorists in traditional opposing stances. It is now relevant to demonstrate the continuum by showing, where I argue, Rawls could be positioned.

II Priority of the right as a range: Demonstration

To demonstrate the continuum, this section will include two analyses. Firstly, I compare Rawls and Kant to show how two theorists who prioritise the right would be positioned within a similar range to one another yet hold distinct places on the continuum. Secondly, I show how the later Rawls develops a mixed conception, where he appeals to features of both priority relations to develop his complementary relation between the right and the good.

An important qualification to note, due to the scope and length of this thesis, I am only demonstrating how Rawls’s theory of justice (traditionality associated with the priority of the right) relies on features of both priority relations. To fully strengthen the notion of the continuum, it would be essential to show also how theorists traditionally associated with the

good relies on features of both priority relations. In addition, the continuum as a tool of analysis could serve as an analytic tool for dialogue between African and Western moral and political theories, whereby one could compare and evaluate the different structural relations between the right and the good. For example, comparing the relation between the right and the good in Ramose's Ubuntu ethics and Rawls's theory of justice. These ideas will be the aim of my post-doctoral research. Let us now turn to the priority of the right as a range and not a position.

Rawls versus Kant

The claim that the priority of the right should be understood as a range and not a position is to account for the nuances of the theory design associated with the priority of the right (or the good). Earlier in the chapter, I illustrated the similar features Rawls and Kant share, insofar as they both prioritise the right. In this section, I complete the comparison by discussing how they differ concerning the implementation of their theory design of the right.

To recap, Kant and Rawls share the feature of objective reasoning and a neutral detached method of justification, a core feature of the right. Let us first consider how Kant views the foundation of morality. For Kant, the stable foundation of morality is the moral law, and as a law, it implies absolute necessity. The source of this obligation for moral actions is pure *a priori* reasoning (reasoning that is independent of one's circumstances). Since *a priori* reasoning is independent of one's circumstances, it enables an objective evaluation of one's moral action, which, in turn, enables the creation of universal laws. Thus, the moral law is universal as all moral commands are detached from experience for them to hold for all circumstances.

This moral law that underlies the good will is, as mentioned earlier, the categorical imperative: "I ought never to act in such a way that I could not, also will that maxim on which I act should be a universal law" (Kant 2002, 37). The categorical imperative is a procedural mechanism that requires individuals to objectively evaluate their motivations in order to act in line with a decision that contains no contradiction. Reasoning according to empirical practical reasoning results in a hypothetical imperative to guide the actions of persons for them to attain some end. For Kant, empirical reasoning can never be a basis for morality, because the maxim to guide one's action will always be subjective and, thus, cannot

be the basis for universal reasoning, as empirical reasoning always leads to conditional statements and actions (Kant 2002, 31–37).

Turning now to the issue of autonomy, for Kant, when one is to reason about morality one must be autonomous. Acting autonomously for Kant implies not acting in line with one's circumstances because to act in this way would be acting heteronomously. Developing an *a priori* rational method of justification (i.e., the categorical imperative) for the principles of morality secures the possibility of developing a universal foundation for morality. It is important for Kant not to prescribe to individuals an *a priori* moral truth that is independent of the persons themselves and their relation to their social world (Rawls 1980, 519), since having internal freedom entails being governed by moral laws that individuals choose themselves.

On the other hand, Rawls's original position and the veil of ignorance also ensure the development of principles of justice from a neutral procedure. Hence, as mentioned earlier, the aspect of the primacy of pure practical reasoning over empirical practical reason is evident in both Kant and Rawls, hence a feature they share associated with the priority of the right. Although Kant and Rawls share the necessity for an *a priori* method of justification, their theories differ fundamentally, concerning the subject of pure practical reasoning itself (ibid., 530–532). This difference focuses their theories in two asymmetrical directions. Rawls applies the objective method of justification only to principles of justice and not individual persons. For Rawls, individuals can develop their own moral principles as long as they adhere to the principles of justice; he is not concerned with the Kantian desire that the moral principles individuals follow should be universalisable. For Rawls, an individual's conception of the good has to be decided in line with the contingent aspects of their lives; this is due to the presupposition that a just society must account for a plurality of moral doctrines. Due to this, the sense of the good is constrained. Rawls, in Lecture IV in *Political Liberalism*, states that Kant develops a comprehensive account of liberalism, insofar as he prescribes autonomy and liberty as essential values “that govern if not most or all of life” (2005, 199). Rawls states that the aim and scope of justice as fairness is different, he does not wish to prescribe the essential values that govern all citizens' lives. Thus, Rawls does not want to develop a comprehensive liberalism as that is not a freestanding view of justice that all persons holding different moral doctrines can accept.

The main difference between Rawls and Kant then, is the distinction Rawls makes between comprehensive or partially comprehensive doctrines and political doctrines, placing himself into the latter category and Kant into the former. As discussed earlier, Kant's moral philosophy rests on a metaphysical assumption of the person that the later Rawls distances himself from. The later Rawls develops a political conception of the person that rests on the political values of the historical tradition and practices of liberal democratic societies. The political conception of the person is still constructed as having the same moral powers and the two forms of reasoning, the rational and the reasonable.

After Rawls's political turn, he contrasts his conception of the person and the kind of society of justice as fairness to comprehensive liberalism that encourage purely individualistic conceptions of the good. Rawls wants citizens to be able to hold conceptions of the good that encourage communal values so long as they acknowledge the demands of justice. The Kantian metaphysical conception of the person is unfairly biased to individualistic conceptions of the good, for Rawls (2005, 198–199). Since toleration is a historical political value that Rawls wants to take seriously, he must replace the metaphysical conception of the person with a reasonable conception of the person. By 'reasonable' here, I mean with a conception of the person individuals can consider plausible to hold given their historical situatedness as members of a democratic society. Thus, this political conception of the person allows room for both individualistic and communal conceptions of the good to flourish so long as they can uphold the political values of justice. This coherence between the right and the good extends to a person's sense of justice and sense of the good, whereby an individual can exercise their sense of the good so long as their rational plan of life does not undermine the commitment to the political virtues of justice.

In comparison, Kant may not prescribe the content of the moral law that individuals must uphold, but he does prescribe a methodology to be used to derive good moral actions not only in persons' public life (i.e., to questions of justice) but in their private life (i.e., to questions of morality). It is this prescription, namely, an action can only be considered moral if it is universalizable, that is itself a moral ideal that Kant imposes on all individuals, which I argue results in him being associated with an attribute of the priority of the good, viz comprehensive liberalism.

On this account, although Rawls and Kant both construct their theories to prioritise the right, their theories are significantly different in terms of their objective method of justification and

the scope to which it applies. “Rawls’s political philosophy differs from Kantian morality in that Rawls’s political philosophy is guided by the question ‘How do we develop a just society?’, whereas Kant’s moral philosophy is guided by an alternative question namely, ‘What does it mean to be a moral individual?’” (Benton 2018, 10). This difference in focus highlights differences between Kant’s and Rawls’s assumptions. Just citizens do not necessarily share the same conception of the good life (given the historical feature of moral pluralism), while good individuals will automatically be just citizens for Kant due to the comprehensive values of liberty and autonomy he promotes.

With these differences in mind, considering them through the lens of the binary positioning between prioritising the right or the good and placing both theories in a single static category of the right can be misleading. On the one hand, it acknowledges their emphasis on a neutral procedure of justification, but it does not acknowledge this difference in the scope of the procedure. This difference is essential, as the scope is what leads to alternative arguments for the ideas of goodness, in terms of comprehensive versus partial conception of the good. This nuance in scope and aim is best conceptualised if the priority of the right is thought of as a range on a continuum. Representing theorists as having more or fewer degrees of attributes that place them in a category can account for the emphasis they place on these features. The more emphasis they give to the one, the more features of this camp are amplified, but that is not to say that a theorist does not develop attributes associated with the contrasting camp. This understanding can account for how Kant develops a universal method of justification for the moral rules of obligation (a feature of the right), while developing a comprehensive conception of the good (a feature of the good). In the following section, I continue this illustration of how Rawls’s account of the complementary nature of the right and the good better encapsulates this understanding of a mixed conception between the two traditional binary positions of the priority of the right versus the good.

Rawls’s theory of justice: A mixed conception

To ensure clarity of my argument in this section, I recap features of Rawls’s theory of justice discussed in Chapter 2, and my argument that justice is the first virtue of all social institutions in Chapter 3. In Chapter 4, I demonstrated the lack of but the need for this complementary relation in liberal society for Rawls. Now, I show the complexity of the complementary nature of the right and the good that Rawls develops is best conceptualised on the understanding of the structural relations between the right and the good as a continuum.

Rawls begins his political theory on the premise that moral pluralism is a necessary condition of a modern democratic society and, as such, society must be constructed in such a way as to mediate the coexistence of multiple conflicting comprehensive goods (Rawls 1988, 267). In contrast to his critics, who develop moral monist theories, this premise puts him at odds with theories of the good. Moral pluralism is a historical feature Rawls must account for. His solution is to develop principles of justice that are determined prior to and independently of the good, with the aim that all persons share the same conception of justice that is independent of, yet mediates, the plural conceptions of the good individually chosen within society. When I say independent of the good, for the later Rawls this means that the justification of the principles of justice does not rely on one singular comprehensive doctrine of ‘the good’. This is not to suggest that it is completely freestanding; it does rely on the consent of multiple competing theories of the good that can at the same time incorporate the political values of justice into their doctrines. Thus, Rawls can only accommodate reasonable comprehensive doctrines. This ensures that the principles of justice respect the freedom of liberal democratic persons to the degree that it respects their right to liberty of conscience, as Rawls aims to allow as many conflicting doctrines of the good as possible (Rawls 1999a, 21–22).

For the principles of justice to be independent of a comprehensive doctrine of the good, Rawls constructs a fair and neutral abstract process of reasoning (the original position and veil of ignorance) in which to evaluate the principles of justice (Rawls 1999a, 104). To qualify, fair and neutral here refers to the fact that the constraint of the first principle of justice on the social life of citizens is fair and neutral. The principles of justice make no metaphysical claims of truth, instead the foundational values are reasonable values given the democratic ideals of liberal democracies. Although the moral values embedded in the procedure make the procedure itself substantive and not neutral if we understand by neutral that the procedure contains no moral values. Rawls in *Political Liberalism* acknowledges this is not possible or desired. Rather only political ideas of the good inform the content of the procedure and the principles of justice themselves, values such as “impartiality, consistency, equal opportunity” (Rawls 2005, 191). Touching on the discussion from Chapter 4, political ideas of the good in other words are moral values that Rawls regards as general, insofar as they are moral values that all citizens can share and affirm from within their diverse comprehensive doctrines (ibid., 175–178).

Given this, the neutrality of aim for Rawls means that the social institutions that result from the procedure are fair and neutral given the constraints of the procedure, thus, ensuring all citizens have the same equal opportunity in which to pursue their doctrine of the good (ibid., 193). The political value of equality is a virtue stemming from the liberal democratic tradition, that Rawls promotes in justice as fairness. This can be seen in the fact that only reasonable comprehensive doctrines can be accommodated in justice as fairness. Thus, not every single doctrine of the good can be pursued in a Rawlsian society. The basic structure will influence the kind of comprehensive doctrines that can endure (ibid.). Or, as Rawls (ibid., 174) states: “In justice as fairness, the priority of the right means that the principles of political justice impose limits on permissible ways of life”.

Due to the fact that the content of justice does not outright promote any comprehensive doctrine from the start, the procedure is characterised by ‘degrees of’ objectivity, a feature of the right. Yet, the fact that there are substantive moral values that are relied on in constructing the procedure, the procedure itself cannot be associated with the understanding of a universal procedure, the procedure is reliant on the liberal democratic tradition, yet ‘the right’ acts as a moral point of consensus in a society marked by moral pluralism (ibid., 175). Rawls affirms this understanding, when he writes that “moral objectivity is to be understood in terms of a suitably constructed social point of view that all can accept.” (Rawls 1980, 519).

Hence, this difference in the degree of objectivity when contrasting justice as fairness¹⁶⁴ against other theorists of the right, may position Rawls along the continuum on a different position compared to Kant. Justice for Rawls, I argue, acts as a *partial overarching non-comprehensive notion of ‘the good life’*, meaning that the right acts as a shared agreement of stability in a constitutional democratic society. Rawls expresses the ideals of justice in the conditions of justification for the right to the degree that he constructs the original position with notions of what is intrinsically valuable, namely, fair social cooperation, civility, toleration, sense of fairness, mutual trust, reciprocity, cooperation, equality of opportunity, liberty of conscience (Rawls 2005, 194).

Rawls (1999a, 192) constructs the content of the right to embody certain societal values without invoking comprehensive conceptions of the good via his method of reflective

¹⁶⁴ A reminder to the reader, that I use justice as fairness and political liberalism interchangeability to denote Rawls’s theory of justice.

equilibrium. The method of reflective equilibrium acts as a process of deliberation through which to identify individual citizens' intuitive moral ideals such as liberty of conscience (Rawls 1999a, 181 & 187). Reflective equilibrium is itself a justificatory procedure stemming from liberal moral tradition, as the need to constantly revise, refine, and reflect on one's moral values to ensure coherence between different moral values implies adherence to liberty of conscience and tolerance as key features of a moral tradition. Thus, reflective equilibrium gives appropriate recognition to citizens and their moral traditions.

This method of reflective equilibrium is not an objective or universal process in any way, because this method itself relies on identifying the empirical moral intuitions of persons. In this way, reflective equilibrium as a method of justification for the content of the right relies more on societal contingencies and less on the universal assumptions of the view of the person. However, there is a *degree of objectivity* or universality associated with the method of reflective equilibrium as it identifies the common moral values of democratic culture (i.e., liberty of conscience) necessary to ground the two principles of justice. Thus, the method relies on the historical tradition of the liberal democratic society (Benton 2018, 137–138).

The original position and the veil of ignorance are other features that align Rawls's theory with *degrees of objectivity*. Objectivity is a feature of the initial agreement since the rational procedure for reasoning about justice must be done figuratively behind a veil of ignorance. Thus, the principles of justice are chosen from an objective method whereby the principles do not favour any group's comprehensive doctrines, moral values, or desires more than others. This idea of objectivity does not imply historical impartiality, as the historical tradition of democratic society is the moral foundation of the procedure. In other words, the fact that Rawlsian individuals are choosing to engage with principles of justice from a procedure where liberty, equality, and equal opportunity of persons are secured, highlights the historical tradition that the principles of justice stem from and apply to. Thus, the principles of justice are not universal in application as they are not applicable to every society, but only those that adhere to liberal democratic traditions

Liberty of conscience is a shared general notion of the good of a constitutional liberal democratic society, which justifies and enables the occurrence of moral pluralism. As Rawls considers pluralism as a historical movement in political philosophy, liberty of conscience is a historical notion of the good that liberal citizens share. In general, it is implied that these political values or non-comprehensive notions of the good are prescriptive notions of moral

value that are wide-ranging enough for persons from diverging comprehensive doctrines to appeal to. The five conceptions of the good¹⁶⁵ discussed in Chapter 2 fall within this general notion of the good, insofar as these are notions of value necessary for all Rawlsian citizens. Political virtues and the ideals connected to them are the necessary features citizens need to uphold for the good of a democratic society.

Rawls acknowledges the necessary moral prescription after his political turn when he states:

“... as I have emphasised throughout, the priority of the right does not mean that ideas of the good must be avoided; that is impossible, rather it means that the ideas used must be political ideas, they must be tailored to meet the restrictions imposed by the political conception of justice and fit into the space it allows” (Rawls 2005, 203).

This quote illustrates the complementary nature of the right and the good; rules of moral obligations invoke moral values, while at the same time, the rules of obligation restrict the kind of acceptable moral values that are acceptable or permissible. The political conception of the person invokes a moral claim necessary for the right, which I turn to now.

Rawls constructs the original position with the assumption that all persons are considered free and equal (Rawls 2001, 14–20). Persons are free in that they are self-determining beings that can choose their moral values and plans of life. Persons are equal since they have equal ability for social cooperation (ibid., 20). The sense of justice and the capacity for the good, Rawls regards as essential capacities of individuals, as discussed in Chapter 2. Rawls refers to the necessary moral psychology needed to develop these capacities; Rawls refers to as the three stages of moral development. In the previous two chapters, I demonstrate that the content of the right has to filter into all comprehensive doctrines, the family, education, and all associations as a categorical virtue that must be upheld. Thus, the values of the political society must be inculcated in all citizens in all aspects of their lives. This is necessary as the stability of Rawls’s theory of justice rests on citizens acquiring the vital capacities of citizenship, namely the ability for mutual cooperation, reciprocity, and the duty of civility. Without these capacities being developed justice will not be stable as citizens will not be able

¹⁶⁵ The five ideas of the good, are goodness as rationality, primary goods, reasonable comprehensive conceptions of the good, political virtues, and the good of political society. Refer to Chapter 2 Section 2.2 for the full discussion.

to form the necessary affectionate bonds needed to unite with their fellow citizens to uphold the requirements of justice. In Chapter 3, I showed how institutions of the family and education, as well as comprehensive doctrines and associations that hold ideals that do not acknowledge the liberty and equality of citizens, or respective members, contribute to the decline of this capacity for citizenship. In Chapter 4, I illustrated that the complementary nature of the right and the good requires the moral values in the right to restrict the possible ideas of the good.

Rawls expresses this sentiment when he states:

“Thus, if a constitutional regime takes certain steps to strengthen the virtues of toleration and mutual trust, say by discouraging various kinds of religious and racial discrimination (in ways consistent with liberty of conscience and freedom of speech), it does not, thereby, become a perfectionist state of the kind found in Plato or Aristotle, nor does it establish a particular religion as in the Catholic and Protestant states of the early modern period. Rather, it is taking reasonable measures to strengthen the forms of thought and feeling that sustain fair social cooperation between its citizens regarded as free and equal. This is very different from the state’s advancing a particular comprehensive doctrine in its own name” (Rawls 2005, 194).

Implicit in this quote is the complementary nature Rawls implies exists between the right and the good. The constraint of the right infiltrates the comprehensive doctrines and associational life in the so-called private sphere, yet this moral constraint does not cause Rawls’s political theory to be a comprehensive doctrine as the right does not prescribe all of moral life for a citizen. There is still freedom for citizens to hold contrasting metaphysical views on the meaning of life, but any view that undermines the commitment to liberty and equality of citizens would be problematic. Supporters of these views and associations that hold these ideals would need to reform their views and associations per the demands of justice.

This brings us to the key distinction of “the good of political society” (ibid., 200). Returning to the discussion of comprehensive liberalism discussed in the previous subsection, Rawls contrasts his political liberalism against Kant and Mill’s liberalism¹⁶⁶, stating that the latter

¹⁶⁶ See: Mill, J.S. 2009. *On Liberty* [online]. Auckland, New Zealand: The Floating Press; Mill, J.S. 2009. *Utilitarianism* [online]. Auckland, New Zealand: The Floating Press. Available at: <https://floatingpress.com/>.

are comprehensive precisely because they encourage individualistic conceptions of the good (ibid., 199). The promotion of individualistic conceptions of the good would be an unjust constraint of the right on the good for Rawls, as that would result in the state promoting some comprehensive versions of the good over others. Instead, Rawls claims that the right is “arbitrarily biased”, insofar as not all doctrines of the good can be preserved; this is affirmed in *Political Liberalism* (2005, 198):

“If a comprehensive conception of the good is unable to endure in a society securing the familiar equal basic liberties and mutual toleration, there is no way to preserve it consistent with democratic values as expressed by the idea of society as a fair system of cooperation among citizens viewed as free and equal”.

This is where the congruence between the right and good becomes more nuanced. Rawls does not give up on the idea of a moral community. This has been implied in the previous section with the communitarian critics that level this claim, precisely because there is no overarching notion of the good that citizens share. Rawls reaffirms that there is no comprehensive conception of the good that all citizens share and, hence, justice as fairness cannot develop a moral community in the same way in which the communitarian thinkers or perfectionist theorists can. Yet, his theory of justice as a political conception of justice can form moral unity around the political values of a liberal democracy. For Rawls, this means that his theory of justice does prescribe some political values that impact the non-political values of persons. These political values as shown above are a partial set of final common ends that all Rawlsian citizens share. As Rawls claims: “They share one very basic political end, and one that has high priority: namely, the end of supporting just institutions and of giving one another justice accordingly” (ibid., 202).

This common good of justice can only be realised through the collective action of all citizens. Thus, justice is a social good, since only through reciprocal relations, mutual cooperation, and internalising the constraint of the right into their version of the good can true stability be achieved. The ending sentence of *Justice as Fairness: A Restatement* (2001, 202) points to this congruence between the right and the good.

“For in the well-ordered society of justice as fairness, the just and the good (as specified by that political conception) fit together in such a way that citizens who

count as part of their good being reasonable and rational, and being seen by others as such, are moved by reasons of their good to do what justice requires”.

Returning to the discussion of a continuum of structural relations between the right and the good, this congruence Rawls develops between the right and the good is lost if one is to think of this theory as solely prioritising the right. Rawls, in prioritising the question of justice, chooses to settle first the conditions of justification for the right. In this way, he develops the conditions of justification of justice as having *degrees of* objective reasoning and neutral procedure. Yet, the procedure itself is constructed on democratic tradition and values; this associates the right with degrees of subjectivist reasoning. By subjectivist reasoning, I mean that Rawls’s theory of justice is grounded in a particular historical tradition and, as such, cannot hold for every society; in this way it is not an objective theory of justice. The values of liberty, equality, civic duty, tolerance, reasonability etc, are relative to liberal social and political systems, and his theory holds on in this particular historical tradition. The principles of justice then rely on these relative moral ideals. These moral ideals are wide-ranging enough so that multiple comprehensive doctrines can hold them, yet not neutral enough to accommodate all comprehensive doctrines. Thus, once again showing that even after this political turn he is not neutral about the good, that is impossible. For Rawls, the priority of the right means that only political ideas of the good should be imposed on citizens and these ideas can influence how we are to define what is and is not permissible ways of life and conceptions of the good.

From *After Virtue* to *Whose Justice, Which Rationality*, MacIntyre no longer regards Rawls’s theory as removed from the historical tradition of its time. MacIntyre no longer regards liberal theory (in extension Rawls’s theory of justice) as being neutral of the good, instead he states that liberal theory does prescribe a conception of moral goodness that stem from the moral tradition of the Enlightenment era of history. MacIntyre demonstrates how individual autonomy and self-determination are the primary moral values of importance in liberal theory that are themselves rooted in tradition (MacIntyre 1988, 340). This is important, as MacIntyre is acknowledging the historical situatedness of Rawls’s theory of justice as a theory purely relevant for societies that hold liberal democratic practices and traditions.

More importantly, although the political ideas of the good are called political in that they do not rely on a comprehensive conception, their application does not stop at the basic structure of society. They must be incorporated into the background culture, or civic society otherwise

stability will not be possible. As I have discussed, the so-called clear divisions of the public and private divide of the early Rawls in *A Theory of Justice* (1999) have dissolved into one another by the time of *Justice as Fairness: A Restatement* (2001) and the revised edition of *Political Liberalism* (2005). Rawls acknowledges that institutions such as the family and education have a key role in the basic structure, insofar as they impact the future development of individuals as just (or unjust) citizens. Thus, the right is applied as a rule of constraint to all associations or institutions to secure citizens' liberty and equality and the development of an individual's capacity for citizenship.

Citizens needing to incorporate moral obligations of justice into their ways of living will require them to make moral commitments in some of the most private spaces of their lives such as in the family by conforming the family to respect liberty and equality of all household members. This is not to say that the right restricts all aspects of the moral worth in family life. As shown earlier, any conception of the good that can be aligned with the moral virtues prescribed by justice is acceptable. Yet, Rawls still leaves room for individuals to form their own conceptions of the good that can align with it. As discussed in previous chapters, Rawls leaves room for individuals to carry out their life plans in line with their conception of the good, so long as their conception is able to align with the political values of liberty, equality, and a fair society. Alignment is necessary for there to be a fusion of the two forms of reasoning. Just as conceptions of the good are constrained by the political virtues, the reasonable constrains the rational. Thus, the complementary nature of the moral powers of persons mirrors the complementary nature of the right and the good.

The fusion of moral powers is necessary with this unity, it would appear that the Rawlsian citizen is split between adhering to the demands of justice and having the freedom to carry out their lives as they wish. These are not mutually exclusive activities as these activities do not take place in separate spheres as the public and non-public spheres of activity overlap. Rawls acknowledges this overlap in the discussion of the family, and extending his logic to similar associations that overlap the public and non-public spheres, one can see Rawls acknowledges the feminist stance that the personal is political.

I claim that the later Rawls's emphasis on the congruence between the right and the good creates congruence between the personal and political. Just as the political restricts the personal, the personal must affirm the political for stability to be possible. In other words, only when citizens can develop the capacities for citizenship and align their good with the

requirements of the right can a truly overlapping consensus be formed. In achieving this, citizens directly contribute to the stability of society, insofar as they have collectively acknowledged their commitment to upholding the virtue of justice and, thus, justice is the final social end that can only be achieved when citizens are willing to choose to restrict their views of the good to what the moral standards of justice require. Although the moral standards of justice are wide-ranging enough to be upheld by citizens holding diverse notions of the good, they do require a strong moral commitment from citizens. Citizens will have to reshape moral values and aspects of their social life to conform to the demands of justice.

Rawls ends *Justice as Fairness: A Restatement* (2001, 201) by returning to the imagery of the social unions of social unions of the early Rawls. Justice is still the collective good that can only be realised much like winning is for a team. Justice is only an aspiration that can be achieved if all citizens acknowledge the dedication that is needed to uphold the requirements of justice and the social pride¹⁶⁷ that comes with that. Thus, Rawls has not given up this commitment that justice is the collective good.

The idea that justice is a common good, even if it is not comprehensive, does leave Rawls with *degrees of* features associated with the priority of the good, as this idea of justice is an overarching notion that all citizens can share, and is the moral foundation of moral unity in a liberal society, albeit a non-comprehensive foundation. This shows the nuanced nature of the congruence between the right and the good that I am trying to convey with my notion of a continuum. Understanding the right and the good as a relation of congruence does not fit well into the current binary representation of the right and the good. By reconceptualising the debate as fluid ranges, one can zoom in on the complexity of the *degrees of* comprehensiveness and objectivity in Rawls's theory of justice. This is significant as the reconceptualisation of this debate helps to illuminate the intricacies of the relationship between rules of obligations and moral prescription.

So far, in this chapter, I have discussed the theory of the right and the good, but it is important to bridge the gap between political theory and political systems of the world to show not only how the binary understanding of the right and the good plays out, but also how

¹⁶⁷ By social pride, here I am referring to Rawls (2001, 201), when he states that democratic citizens feel a sense of pride when comparing themselves to other nondemocratic social systems.

the continuum can account for the nuanced relationship between the right and the good within a political system.

III Political systems of the right and the good

Liberal versus communitarian politics mirror the priority relation of the right for the former and the good for the latter in a state of polarisation. Liberal politics has been critiqued for being absolutist about human rights but noncommittal to imposing a metaphysical or philosophical view of human value, while communitarian politics prescribe a comprehensive metaphysical, philosophical, or religious conception of human life to its members (Rorty 1988, 176). This binary distinction is what Gutmann refers to as the politics of right versus the politics of good. She notes that moral intolerance historically has been associated with the politics of the good, “The common good of the Puritans of seventeenth-century Salem commanded them to hunt witches; the common good of the Moral Majority of the twentieth century commands them not to tolerate homosexuals” (Gutmann 1985, 319).

Similarly, Rawls begins *Political Liberalism* (2005, xx–xxi) by situating the historical rise of moral pluralism stemming from the intolerance of religious wars. For him, prescribing moral truth claims of human nature threatens the freedom of individuals because it fails to respect moral pluralism as a historical condition. Thus, again I highlight, that Rawls does not fail to take into account historicity. He acknowledges the historicity of individuals living within liberal democratic society to the degree that he prioritises tolerance and liberty of conscience as values stemming from the historical tradition his theory is to apply to. Rawls (2005, xxvi) claims, “To see reasonable pluralism as a disaster is to see the exercise of reason under the conditions of freedom itself as a disaster”. Thus, he is emphasising the historical tradition of the rise of pluralism and its related values of tolerance, liberty of conscience, and freedom of association as a new moral and political tradition that arose out of the historical events of the past, such as the Reformation. If these values are problematic for his critics, it should not be because they stand apart from history because, as later Rawls demonstrated, these values emerge from history. Rather if liberal values such as tolerance are problematic, then they must be criticised for the kind of social structure that does or does not result from it.

Where liberal politics aims to tolerate, politics of the good, as Sandel says, can provide a moral foundation for intolerance; “Communitarians would be more likely than liberals to allow a town to ban pornographic bookstores, because pornography offends its way of life

and the values that sustain it” (Sandel 1984, 17). Intolerance is necessary in politics of the good as society needs to promote and uphold the civic ties of citizens. To do so, thinkers like Sandel argue that it may be necessary to be intolerant of ways of life that undermine the traditions and communal values of society. Sandel claims liberal politics cannot account for this intolerance, due to having a freestanding view of justice.

If we turn to current political systems, for example, a political system that models the priority of the good is the Islamic Republic of Iran. The current constitution of Iran adopted in 1979 describes the form of Iran’s government as follows:

“Rather, it represents the fulfilment of the political ideal of a people who bear a common faith and common outlook, taking an organised form in order to initiate the process of intellectual and ideological evolution towards the final goal, i.e., movement towards Allah. Our nation, in the course of its revolutionary developments, has cleansed itself of the dust and impurities that accumulated during the past and purged it of foreign ideological influences, returning to authentic intellectual standpoints and world-view of Islam. It now intends to establish an ideal and model society on the basis of Islamic norms. The mission of the constitution is to realise the ideological objectives of the movement and to create conditions conducive to the development of man in accordance with the noble and universal values of Islam”
(Constitutional Council 2021).

This above statement illustrates the comprehensive doctrine of Islam as the overarching moral ideal of the Republic of Iran. The right, in this case, would be the rules of constraint within Iran that aid the realisation of the ideological goals and ends of Islam. Thus, the justice system is based on and there to enforce the Qur’an, the five pillars of Islam, and Shari’ah Law. The priority of the good, in this case, results in alternative moral, metaphysical, philosophical, or religious views that are in opposition to Islam to be confined to the outskirts of Iranian society.

In contrast to this, a political system that prioritises the right is evident in liberal constitutional democracies. Let us consider the example of the Republic of South Africa. South Africa is an example of a country that prioritises the right, insofar as the constitution of 1996 and its amendments do not promote or encourage one singular comprehensive

doctrine.¹⁶⁸ Instead, South African law ensures liberty of conscience, freedom of association, and separation of church and state. Liberal constitutional features such as these encourage moral pluralism and develop a freestanding account of justice, insofar as the constraint of the right is there to enable a flourishing of multiple comprehensive doctrines that fit into the constraint of the values underlying this system of constitutional democracy.

A practical example of this difference between the complementary nature of the right and the good within opposing political systems is as follows. In Iran, all banks are compelled not to charge interest rates in compliance with Shari'ah Law. In contrast, in South Africa, Shari'ah Law is only applicable to citizens who follow the doctrine of Islam. For these citizens, banks in South Africa offers them the possibility to open an account that adheres to aspects of Shari'ah Law (Standard Bank, 2023). Given this, the priority of the right can accommodate and cater for multiple moral or religious doctrines, while the priority of the good caters to one comprehensive doctrine or a core set of comprehensive moral values.

Therefore, from this brief discussion, it should reiterate the dualism that either prioritises the right or the good has been presented as standing in direct conflict with one another as they develop opposing arguments of justification for their theories which impact the political systems in general and more specifically their ideas of morality and justice. Furthermore, this binary interpretation cannot account for is the complementary nature of the right and the good.

Just as in political systems that prioritise the good, the right must facilitate the good, while in political systems that prioritise the right, the good must cohere with the right. In other words, the good can be multiple (accommodating diverse doctrines and final ends) but the good must not conflict with the requirements of justice. Returning to the example of South Africa, Chapter 1 of the constitution stipulates the founding provisions of the republic, namely:

¹⁶⁸ There is debate over whether or not the South African constitution expresses ubuntu ethics, see: Metz, Thaddeus. 2011. 'Ubuntu as a Moral Theory and Human Rights in South Africa', *African Human Rights Law Journal*, 11(2), pp. 532–559; Keevy, I. 2009. 'Ubuntu Versus the Core Values of the South African Constitution', *Journal for Juridical Science*, 34, 2, pp. 19–58. A further point of research post this thesis will be an investigation of this, and the implications this would have on the relational relationship I am trying to develop between the right and the good.

“South Africa is one, sovereign, democratic state founded on the following values: (a) Human dignity, the achievement of equality and the advancement of human rights and freedoms. (b) Non-racialism and non-sexism. (c) Supremacy of the constitution and the rule of law. (d) Universal adult suffrage, a national common voters roll, regular elections and a multi-party system of democratic government, to ensure accountability, responsiveness and openness” (The Constitution of the Republic of South Africa, 1996).

Values such as liberty, equality and the promotion of human dignity are moral values that form the content of the right and its legislative structure of justice and hence are promoted in the South African political system. Viewing the priority of the right and the good as dichotomised cannot conceptualise this nuanced relation, therefore I propose the continuum to account for how these nuances in political theory play out in political systems.

The coherence between the right and the good matters for how we understand and implement justice in a society, as the relation between these concepts determines what constitutes justice in society. For example, in a theocracy such as Saudi Arabia, where the good is given priority, justice is the rule of constraint that helps to realise the religious and metaphysical ideals of Islam. In contrast in a liberal constitutional democracy such as South Africa, the right is given priority. Justice then is a set of rules that mediates the coexistence of multiple religious, metaphysical, or philosophical notions of value that South African citizens may have. Thus, justice in the first case is understood to be a set of rules that help actualise a particular comprehensive doctrine, while in the second case, justice is understood to be a set of rules that does not promote any one comprehensive doctrine. In the latter case, a political system is built to embody and realise the aims of certain moral or political ideals. How these theories choose to construct the relation between the right and the good has a direct bearing on political structures and individuals’ private lives.

5.4 Conclusion

To summarise, in this chapter I have presented the current binary relationship between the priority of the right and the priority of the good. In this discussion, I demonstrate the alternative features of the theory design of each position. Theorists associated with the good (Sandel, Taylor, MacIntyre, and Walzer) focus on emphasising communal relations, the historical conception of the person, decision-making making for justice, developing a

comprehensive moral value system, and using rules of obligations to serve their prioritised good. In contrast, theorists associated with the right (Kant and Rawls) are seen to emphasise individualism, present the conception of the person as abstract and removed from its historical context, rely on objective decision-making procedures for justice, create a freestanding justification of morality or justice that is independent of individuals particular desires, and, lastly, develop categorical rules of obligations for morality or justice that are prioritised over individuals desires or conceptions of the good.

I argue that this binary representation of the debate as the priority of the right and good as being dichotomised may not be as dichotomised as originally thought. For example, as shown, Kant develops both a comprehensive liberalism and relies on an objective method of evaluation. His comprehensive liberalism places him within the theoretical camp of the priority of the good, while his *a priori* method of reasoning places him with the theory design of the right. Further research post this thesis is necessary to develop an in-depth investigation of how many theorists develop their moral and political theories with theory design elements of both the right and the good.

Once I had reflected on the structural relation of the priority of the right and the complementary nature the later Rawls develops, I further showed that justice as fairness is positioned with degrees of features of the priority of the right and the priority of the good. Rawls's theory of justice has gradations of the priority of the right in terms of an objective method of justification for the principles of justice, which can be seen in the original position, veil of ignorance, and reflective equilibrium. Another feature of the priority of the right is evident in Rawls's insistence that the principles of justice must be freestanding of comprehensive conceptions of the good. This is to ensure that society is constructed fairly, in that it respects the liberty and equality of all persons and, as such, does not try to promote from the start one singular conception of the good.

The later Rawls in response to his communitarian and feminist critiques highlights the complementary nature of the right and the good in his theory of justice. Later Rawls with his political conception of the person, illustrates the historical situatedness of his theory of justice, thus side stepping the critique of developing a metaphysical conception of the person in *A Theory of Justice* (1999). He acknowledges that his theory of justice relies on the liberal democratic tradition. This is the tradition that emphasises liberty of conscience, tolerance and freedom of association. In taking these historical values seriously he constructs his principles

of justice and his hypothetical procedure of reasoning with these in mind. In addition these political values are the latent moral sentiments that all citizens of a constitutional democratic society share. It is these values that form the content of reflective equilibrium, and act as reasonable political values of stability to settle disagreements in the public sphere.

Moreover, the fusion of the moral powers of persons is important for Rawls. This is necessary as I have shown in previous chapters, as without this fusion individuals will hold conflicting values in different aspects of their lives. In order to ensure just citizens, Rawls restrains individuals' sense of the good and possible comprehensive doctrines to the condition of reasonability. In other words, he maintains that any comprehensive of the good is possible so long as it can support the political values of justice, namely liberty, equality and mutual cooperation for mutual benefit. Thus for Rawls justice as fairness can overlap with only reasonable comprehensive doctrines, this is to ensure that the freedom and equality of individuals is safeguarded.

This fusion of moral powers and the constraint of the right on reasonable comprehensive doctrines illustrate that justice is the subject of both the public and private sphere. This is not to suggest that Rawls develops a comprehensive doctrine, but rather that his political conception of justice relies on a partial set of political values stemming from democratic traditions, which all individuals can and should adhere to while holding their reasonable comprehensive moral doctrines as shown in Chapters 3 and 4. Therefore as discussed in the previous chapter justice is the collective good for Rawls that can be achieved when all citizens acknowledge and internalise the political virtues into their most intimate areas of their life. This internalisation of political virtues into the private sphere is what enables not only a just society in a liberal democracy but also a stable society, as shown in Chapter 4.

The final section of this chapter on the relationship of the priority of the right and the good in current political systems highlights the interconnectedness of these notions mentioned in the beginning of the chapter. Political systems that are grounded on a comprehensive conception of the good, use rules of obligations for instrumental purposes to ensure their good is prioritised, such as shown in the case of Iran. In comparison, political systems that prioritise the right, such as liberal constitutional democracies, as seen in the case of South Africa, rules of obligation are prioritised and the conceptions of the good are subordinated to the constitutional requirements. Yet political systems just like moral and political theories need to develop a complementary relation between the right and the good. The rules of obligations

and moral values must work together to form a stable society. The continuum as a tool of analysis could better account for and demonstrate the nuanced nature of the right and the good in political systems and moral and political philosophies.

Chapter 6:

The current paradigm in Rawlsian scholarship does not regard political values as necessary values that need to be upheld in the non-public sphere.¹⁶⁹ In this thesis, I set out to develop an alternative reading of Rawls's political conception of justice as fairness. On this reading, I claim that he requires the first principle of justice (and aspects of the second principle, namely, equal opportunity) as an indirect constraint for the private sphere. This constraint necessitates a reshaping of moral doctrines and forms of associational life to adhere to the political values of liberty, equality, and equal opportunity.

Allow me to recap the core elements of Rawls's political notion of justice as fairness to substantiate my interpretation. In Chapter 2, in my exposition of his theory of justice, I discussed the presuppositions and constraints of justice. For the presuppositions of justice, Rawls's focus is on a just society as a fair society, this stems from the social contract tradition in which political institutions and leaders are seen to gain their legitimacy from the consent of the governed. For Rawls, citizens are willing to consent to social arrangements if they are able to mutually benefit from them. Rawls stressed developing just conditions in the basic structure first, but this did not imply that he neglects the background culture of society. The basic structure and the background culture (i.e., civil society) both need to be just, given that both domains of society are necessary for a just society to be possible. Thus, Rawls regards justice as the subject of both domains (Rawls 2001, 163).

Rawls states that his conception of justice is embedded in the historical tradition of liberalism and, as such, his aim is to develop principles of justice that represent the freedom and equality of the tradition (Rawls 2005, xli). To achieve this, he develops an impartial method of reasoning (namely the original position and the veil of ignorance) in which to justify that these are principles that can best realise the freedom and equality of persons. The first principle secures the basic rights that enable citizens to be free and equal, while the second principle secures the distribution of public goods to help actualise the freedom and equality of all (Rawls 2001, 42). A fair distribution of public goods includes a social minimum, and fair equality of opportunity and inequalities are permissible if, and only if, they benefit the worst

¹⁶⁹ Besides the article by Walsh discussed in Chapter 1 and 3, most secondary scholarship on Rawls highlights his inability to extend justice to the family, See: Walsh, B. M. 2012 'Private and Public Dilemmas: Rawls on the Family', *Polity*, 44, 3, pp. 426–445.

off in society. Both principles together can secure the necessary political and social conditions that reflect a fair, free, and equal society.

Furthermore, for Rawls, working in the liberal tradition, moral pluralism is a necessary condition of a just society (Rawls 2005, xxx–xxi). Given this, the principles of justice for Rawls are freestanding of comprehensive conceptions of the good, as they do not promote a particular comprehensive moral doctrine. This is not to suggest that the principles of justice are morally neutral in that they do not promote moral values. The values they do promote are liberty and equality. Rawls considers these moral values to be political values, insofar as they can be upheld by a wide variety of conflicting comprehensive doctrines of the good. Thus, only reasonable comprehensive moral doctrines can exist, ones that are able to uphold the political values (*ibid.*, 190–195).

A stable Rawlsian liberal society then relies on an overlapping consensus, whereby individuals must align their political values and their comprehensive moral doctrines. For stability to be possible, this alignment requires a complementary relation between the right and the good, the domains of society, and the capacities of the person. First, the right and the good need to complement one another, inasmuch as the right constrains the good, yet individuals realised that their good can be realised within a just society and, thus, are willing to adhere to the constraint of the right. Second, the domains of society must cohere in that both the basic structure and the background culture of society need to promote and adhere to the political values. Third, the fusion of the moral powers of persons is important; the sense of justice and the sense of the good need to agree to the extent that rational plans of life must conform to the boundary of the right.

Before I address the moral powers of persons, it is important to summarise the moral development necessary for these powers to be exercised. Rawls's three stages of moral development, namely, the morality of authority, associations, and principles are all necessary stages for citizens to form ties of friendship (Rawls 1999a, 409–413). These ties are essential, as Rawlsian society is founded on the condition of reciprocity, whereby citizens choose to exist and cooperate with one another on mutually beneficial and fair grounds. For justice to be realised, citizens need to form bonds of love and trust, which is a basis for their mutual self-respect. For morality of authority, these bonds are formed in the family and educational institutions. Associational life, in the form of churches, scientific associations, and recreational clubs, creates the social conditions for their membership base to develop ties of

affection in the second stage of moral development, the morality of association. In the final stage, the morality of principles, ties of affection between citizens now extend to citizens that do not form part of the same moral communities. In this way, the morality of principles is primarily an exchange of affectionate ties between citizens that are not morally like-minded, insofar as all they may have in common is their commitment to a just society but do not share similarities in their associational ways of life. This final step enables citizens' sense of justice to be fully achieved, as citizens need to be able to reason from the perspective of mutual benefit and, thus, exercise their public use of reason.

Returning to the complementary nature of the moral powers of persons. Reasonability is a judgement of the sense of justice and requires the capacity to deliberate by appealing to political values for social, political, and economic policies (Rawls 2005, 48–58). Rationality is a judgement that citizens exercise when making rational life plans; here they appeal to their fully or partially comprehensive moral doctrines (Rawls 2001, 19–22). The reasonable and the rational must complement one another otherwise citizens will be left with a split moral personality. For instance, arguing in favour of a comprehensive doctrine that promotes prejudice would be in direct conflict with the values of liberty and equality that citizens need to be able to uphold in society in general.

Rawls, during his revisions¹⁷⁰, acknowledges this complementary need between the right and the good, the domains of society, and the judgements of the person and, as a result, he extends the demands of justice to both the basic structure and the background culture of society. There are three requirements of justice in the non-public sphere for Rawls. The first, is that the second principle of justice, comprising of fair equality of opportunity and the difference principle, should not apply to the background culture (since it is not a constitutional essential) (Rawls 2001, 164–165). However, as I have stated in previous chapters, aspects of the second principle such as equality of opportunity and a social minimum do apply, since they are constitutional essentials. The second requirement is that the first principle that secures the basic rights, liberties, and equalities is to apply to the non-public sphere as Rawls regards this principle as part of the constitutional essentials (Rawls 2005, 228–229). The third requirement for justice in the non-public sphere is that the

¹⁷⁰ As stated previously throughout this thesis, these revisions include *Justice as Fairness: A Restatement* (2001), the revised edition of *Political Liberalism* (2005), especially Part 4 'The Idea of Public Reason: Revisited'.

application must be indirect and not direct. Indirect application means that the first principle with the moral sentiment of equal opportunity must apply as a constraint. It is a constraint in that it requires all voluntary and non-voluntary associations in society to fundamentally adhere to this requirement. The content of family life is not prescribed, so long as it adheres to this requirement. For instance, in Chapter 2, I discussed the kinds of family life that could be possible, nuclear family, polygamous family, civil unions etc. so long as the members uphold the liberty and equality of one another. Rawls uses the family as an example of this indirect application but states that this application applies to not only the family but all associations, as he confirms “Even if the basic structure alone is the primary subject of justice, the principles of justice still put essential restrictions on the family and all other associations” (Rawls 2005, 470–471).

My interpretation of Rawls in Chapter 2 then leads me to make the claim, in Chapter 3, that Rawls would require strict congruence between political institutions and civil society, to ensure adequate development of individuals’ capacity for citizenship and civic ties of friendship. In this chapter, I first discussed Nancy Rosenblum’s argument¹⁷¹ for relaxed congruence. She claims that there is not necessarily a spillover of values from civil society to public life, thus illiberal values in civil society may not undermine commitment to political values in public life (Rosenblum 2018, 48). Moreover, she states that illiberal associations should exist as persons have the right in liberal society to disassociate as they see fit (ibid., 158). Additionally, these illiberal associations such as paramilitary groups may not undermine adherence to political life as these groups teach dispositions (i.e., discipline) and enable the formation of affectionate ties among members, necessary for stage two of Rawls’s morality of association (ibid., 244).

In contrast to a relaxed congruence, I suggest that the indirect application of the first principle of justice and aspects of the second principle viz. equal opportunity on the background culture (i.e., civil society) is important, since it safeguards individuals’ moral development necessary for them to be able to be just citizens. At the different stages of moral development, necessary bonds of love, care, and trust are important. If these bonds are not formed, then

¹⁷¹ See *Membership and Morals: The Personal Uses of Moral Pluralism in America* for a comprehensive discussion of Rosenblum’s argument & Rosenblum, N, 2020. ‘Compelled Association: Public Standing, Self-Respect, And The Dynamic Of Exclusion’, in Gutmann, A (ed.) *Freedom of Association*, revised edition. United Kingdom: Princeton University Press, pp 75–108.

citizens may have an underdeveloped self-worth as they are not given equal respect as other citizens within the family, educational system, or associational life. The example of a female child being raised where all the formative associations in her life (i.e., family, education, church) regard her as metaphysically inferior to her male sibling, could result in her self-worth being impaired. This is due to the lack of equal respect she receives; she may not then develop ties of love and affection but rather resentment and apathy.¹⁷² Due to this, it is possible that individuals will not have the desire or the ability for mutual cooperation on free, equal, and fair grounds.

To protect this moral development of citizens so that they form the necessary moral psychology in which they desire and are able to cooperate on fair, free, and equal grounds, Rawls would require these comprehensive moral doctrines to adhere to this constraint of the right. As discussed in Chapter 3, reasonable comprehensive doctrines are those that have adapted to adhere to this constraint and change with the historical times. By this, I mean one of the reasons Rawls regards Catholicism as a reasonable moral doctrine is that it has made alterations to its doctrine to align with liberty and equality as political values of liberal society. In *Justice as Fairness: A Restatement*, Rawls states:

“The crucial question may be what precisely is covered by genderstructured institutions. How are their lines drawn? If we say the gender system includes whatever social arrangements adversely affect the equal basic liberties and opportunities of women, as well as those of their children as future citizens, then surely that system is subject to critique by the principles of justice” (Rawls 2001,167).

If comprehensive doctrines promote inequalities, or restrictions to liberties or encourage unequal opportunities on metaphysical, philosophical, or religious grounds, and this can be shown to impact citizens’ freedom and equality as citizens, then they require reshaping. An example I gave to demonstrate this point was the idea of females in the Catholic Church as being prevented from being ordained. Ordination is both a moral and an economic position. Moral in that it is a position ordained by God, and economic in that these individuals have to adhere to fair, free, and equal labour practices. If women are prevented from holding economic positions due to their gender (in this case, but any person due to their race, class etc.), then that impacts their rights to be seen as free and equal members of society, as they do

¹⁷² Note, as stated in Chapter 3, more sociological studies would need to be done to substantiate this point.

not have the equal opportunity to occupy some economic positions. Therefore, this example shows how fluid the boundaries are between the public and non-public spheres, and the need for the right and the good to complement one another. More significantly, this need for the reshaping of comprehensive doctrines and associational forms of life to adhere to the political values, highlights how the indirect application of the first principle of justice and equality of opportunity can account for just conditions of the private lives of women since the principles of justice extend to this sphere. This thesis provides an interpretation that the principles of justice require the reshaping of associational life and moral values in the background culture.

The fact that women or any citizen could be protected in the most intimate aspects of their moral lives from the constraint of the right, is precisely why I ended Chapter 3 with the idea that justice is a non-comprehensive collective good for Rawlsian citizens. This is an outcome of the fact that justice is the subject of both spheres. Thus, the right must curtail the good to some degree; as shown earlier, the notions of the good that can exist are many and are varied so long as they uphold the liberty and equality of its members. Before I discuss why this prescription does not result in Rawls's political conception of justice as fairness as comprehensive, I must address my focus of Chapter 4, how this need for a complementary relation between the right and the good does not exist in current liberal societies.

In Chapter 4, I suggested that the decline in adherence to liberal values demonstrates that liberal political systems in the twenty-first century are unbalanced. This instability I attributed to the fact that citizens have not developed civic ties of friendship, due to the final stage of the morality of principles not being achieved. I turned to Hochschild's sociological evidence in *Strangers in their Own Land: Anger and Mourning on the American Right* (2016) to demonstrate that civic ties of friendship are missing in the United States. In Hochschild's deep story, the United States voters she interviews have a sense of resentment and anger towards their fellow citizens, specifically those marginalised groups that are now 'cutting the line' (Hochschild 2016, 157). The anger and resentment these voters feel are specifically towards marginalised groups and groups that do not uphold the same moral doctrine and views they do (those that are not like-minded in terms of their rational plans of life). The fact that citizens from diverse groups do not feel love, care, or respect for fellow citizens that are not like-minded, appears to be evidence of a breakdown of the ties of civic friendship Rawls insists upon since they share no mutual respect or ties of political loyalty. As a result, these

citizens are not able to exercise their commitment to upholding the political values necessary for a just and stable liberal society.

This underdevelopment of the morality of principles explained above has been further hindered by the role of digital and AI technologies in creating barriers to epistemic participation in liberal societies, such as the United States. This leads to increased anti-democratic views and the undermining of liberal values. I demonstrate that this threat to the stability of liberal society has been amplified by digital and AI technologies, by perpetuating illiberal and unequal historical biases and undermining free and equal epistemic participation as seen in echo chambers and epistemic filter bubbles. Both have aided the widespread movement of illiberal, populist, nationalist, and authoritarian sentiments.

In Chapters 1 and 4, I stated that literature on ethical concerns around digital and AI technologies rarely engages with political philosophy. One example, in this case, is Reuben Binns's article 'Algorithmic Accountability and Public Reason' (2017). He suggests using public reason as a requirement for overcoming algorithmic bias in AI technologies. I claim that more research needs to be carried out by political philosophers on ethical concerns in AI technologies. Political philosophers have the potential to offer insights into ethical concerns in the digital environment, since some of the traditional concerns political philosophers already address are heightened in the digital space. Thus, this thesis highlights the urgent need for such work to be done. I demonstrate this potential by showing how Rawlsian political theory can make sense of the current decline of liberal democracies and can mitigate these concerns if digital technologies can mirror the complementary relation of the right and the good that Rawls requires. Thus, a point of further research after this thesis is to contribute to the debate on AI ethics and the politics of AI technologies and the role these technologies have in weakening adherence to liberal values, and the role they could have in strengthening liberal values.

The Rawlsian solution I offered to strengthen adherence to liberal values is to constrain individuals' associational life and partial comprehensive doctrines. If liberal society were to extend the first principle of justice as a constraint for associational life, as Rawls suggests, this could help to achieve adherence to the liberal values, necessary for liberal democracies to be stable. Given that this constraint requires political values to be integrated into the non-public sphere of society, citizens would then have their freedom and equality acknowledged across society. This would help to ensure that citizens can achieve all three stages of moral

development as there currently seems to be a breakdown of movement from the second to the third stage for individuals that do not hold forms of associational life that complements the political values. Therefore, I suggested in Chapter 4 that in the example of the resentful voters, it may be the case that the right does not constrain the good in the complementary manner Rawls suggests, thus undermining reciprocity.

In Chapters 2 and 3, I have shown that Rawls argues for the complementary relation between the right and the good, and why it is necessary for stability in Chapter 4. I then suggested in Chapter 5 that the need for political values to be integrated into the background culture does not result in Rawls's theory being a comprehensive theory of justice. I claim that its nuanced relationship between the right and the good cannot be explained in the current binary representation of the priority of the right and the good debate.

The binary debate of the priority of the right and the good is currently at a stalemate in political philosophy in that it is exhausted. It is exhausted as the supposedly opposing positions are seen to be in direct conflict with one another. I demonstrated this conflict with the discussion of Michael Sandel, Alasdair MacIntyre, Charles Taylor, and Michael Walzer, and their critiques of the theory design used by theorists that prioritise the right, such as Rawls. To recap my argument from Chapter 5, Sandel critiques the Rawlsian rational conception of the person as ahistorical since it is conceptualised and understood as having rational plans of life but not as being constituted by these rational plans of life and historical and communal situatedness (Sandel 1984, 83).

MacIntyre critiques the moral relativism of liberal society which Rawls advocates for. For MacIntyre, this society is problematic as individuals have no common moral values to adjudicate their decisions in civil society (MacIntyre 2007, 19–32). This is a result of the individualism of liberal society. Taylor echoes MacIntyre's problem of the moral neutrality of liberalism, which theorists such as Rawls promote. In addition, he critiques the idea that principles of justice should be derived from a rational objective procedure (Taylor, 1989, 27). In contrast, Walzer's argument that the principles of justice have to be understood and developed from within the context that they are to apply to and, as such, an objective procedure for developing the Rawlsian rules of obligation, is problematic (Walzer 1994, 11–12). Thus, the rational conception of the person, the detached procedure of reasoning, and the moral neutrality associated with moral pluralism are problematic feature designs of theories

associated with the right. Allow me to recap the notion of the concept of the continuum before I review it.

I suggest reconceptualising the relationship between the priority of the right and the priority of the good as a continuum of structural relations between the right and the good to account for the complex relation Rawls develops between the right and the good. The notion of the priority of the right and the good as ranges on a continuum involves the understanding that the priority of the right and the good should not be seen as uniform positions, whereby theorists that have design features of one or the other position share the same features as other theorists in this same position. Before I continue with the conceptualisation, allow me to show the significance of this point.

It is important to acknowledge theorists associated with the theory design features of the priority of the right as similar *in degrees* instead of regarding them as similar overall. Rawls and Kant share features of an objective procedure of reasoning, in that they both construct their procedure from a detached position to prevent contingent features of the person to impact their rules of obligations. Political rules of obligation for Rawls and moral rules of obligation for Kant, yet their objectivity is different, Kant relies on *a priori* reasoning, whereas Rawls grounds his procedure in the historical tradition of liberal theory, thus, it is not a universal object procedure. Representing the priority of the right as a binary position leads to a possibility of viewing theorists as homogenous with this theory design element, insofar as they could be seen to develop a uniform reliance on objective reasoning, when, in fact, they develop different degrees of reliance on this feature.

Returning to the conceptualisation of the continuum. A further necessity for understanding the priority of the right and the good as ranges is to highlight the possibility that theorists could develop features associated with the priority of the right and those associated with the priority of the good. In Chapter 5, I demonstrate that a nuanced reading of Rawls's theory of justice, and his requirement for a complementary relation between the right and the good, could lead him to be viewed as having elements of both priority positions. Allow me to review his theory design elements considering this understanding of the continuum.

Rawls in *Political Liberalism* and *Justice as Fairness: A Restatement* constructs the conception of the person from the historical tradition of liberal society as opposed to a Kantian metaphysical conception of the person as represented in *A Theory of Justice*. Rawls's

instance of moral pluralism (later refined by the addition of reasonable) is his acknowledgement of the historical tradition that his theory of justice is to apply. Liberty of conscience is a considered judgement of this liberal tradition. Thus, a liberal theory must take into account that societal formation is between individuals who hold conflicting moral truth claims. Justice as fairness is associated with features of historical contextualisation ‘normality’ associated with the priority of the good, due to the fact that Rawls takes seriously the liberal values that form the content of the right.

In contrast, simultaneously, his theory of justice is associated with moral neutrality in that his detached procedure of reasoning requires the principles of justice to be chosen from a procedure that is impartial. The impartiality of this procedure relies on the fact that the contingent features of the person do not have a bearing on the kinds of principles chosen, thus, enabling a freestanding theory of justice. Therefore, Rawls’s thinking is associated with ‘degrees of’ moral neutrality since he does not promote one singular comprehensive moral doctrine as the foundation of justice. To consider the principles of justice as being morally neutral, in that they do not promote moral values, would be a mistake. Values such as liberty, equality, equal opportunity, tolerance etc. are the moral ideas embedded in the political values of the principles of justice. Given this, although Rawls’s theory of justice has ‘degrees of’ historical contextualisation, it also has ‘degrees of’ neutrality as the procedure of reasoning ensures some historical contextualisation, but not all.

Furthermore, the fact that the right is independent of the good means that the right (the rules of obligation) for Rawls is determined first and the acceptable moral values (comprehensive doctrines and associational ways of life) that can be considered to be just, are those that can adhere to the constraint of the right. To understand the constraint of the right as making no requirements on the non-public sphere (civil society) would be to neglect how the good must conform to the right. This conformity is achieved by the requirement of reasonableness, the overlapping consensus, the moral psychological development of individuals, and the indirect application of the first principle (and the moral idea of equal opportunity and a social minimum of the second principle).

The requirement of the good being dependent on the right for its realisation means that the political values of the right demarcate the acceptable ideas of the good and forms of moral life from the unacceptable ideas. Thus, this is a form of moral prescription, which Rawls himself acknowledges, as he states that no society can account for all forms of life (Rawls

2005, 197). This moral prescription Rawls acknowledges inclines readers to think of perfectionist states or comprehensive doctrines (ibid., 196). Rawls disagrees that his prescription leads to his theory being comprehensive, since justice as fairness can account for multiple reasonable conceptions of the good. The fact that Rawls's theory of justice is not comprehensive does not imply his theory of justice does not promote moral ideas. The liberal values of liberty, equality, and equal opportunity are the underpinning moral ideas that form the content of the political values. These values are political and non-comprehensive as they can be held by a wide variety of comprehensive moral doctrines since they do not promote one singular doctrine, nor do they prescribe all the internal runnings of associational life.

As shown in Chapters 2 and 3, some internal running of associations (those that undermine the liberties and equalities of its members) may require reshaping in line with the requirement of the right. This constraint still allows for diverse (but not all) comprehensive doctrines to co-exist, only those that can internalise the political values. This restriction enables the fusion of the sense of justice and the sense of good as, without it, the political values of the right and the moral values of the good would be in conflict. The outcome of this prescription is not to suggest that Rawls's political conception of justice as fairness is comprehensive, he denies this (ibid., 197–198). He regards justice as fairness as political as opposed to the comprehensive liberalism of Mill and Kant, given that they promote individualistic forms of life, while justice as fairness can accommodate varied forms of individualistic and communal forms of moral life (ibid., 198–199).

The commitment to acknowledge these political values as worthwhile, while choosing to adjust one rational plan of life and associational forms of life in line with the respect and equality of citizens, enables the good of political society to be achieved. Therefore, the morality of principles is the final stage that helps develop bonds between citizens, not based on comprehensive views but on their commitment to one another as fellow citizens. Thus, the good of political society is justice. Justice cannot be realised if citizens do not uphold their commitment to liberty, equality, and equal opportunity. Thus, justice is the collective non-comprehensive good that citizens of liberal society share. Due to this, Rawls does not promote the same kind of individualism that Kant promotes, nor does Rawls desire the same kind of moral community of perfectionist or comprehensive theories associated with the good. This is not to suggest that there is no moral unity in justice as fairness. The moral unity is seen in the unity formed by the Rawlsian citizens reshaping their rational plans of life,

moral doctrines, and associational life to adhere to the political values of the constraint of the right. Thus, the common commitment by citizens to uphold political values enables a civic friendship necessary for citizens' mutual cooperation for justice as a common good to be realised. This understanding of justice as a common non-comprehensive good, shares features of the priority of the good, insofar as Rawls develops an idea of the common good. However, the Rawlsian idea of the common good is different, I claim he develops a non-comprehensive community of justice as opposed to a comprehensive moral community.

Thus, the call for this continuum is to highlight the complex yet complementary relation between the right and the good within justice as fairness. The idea of the continuum presented in Chapter 5 only presents a one-sided view, where I show how Rawls (a theorist of the right) occupies ranges on the continuum. A further point of research after this thesis will be to develop a more comprehensive conception of the continuum. I aim to demonstrate how other moral and political theorists develop nuanced relations between the right and the good. This results in the possibility of conceptualising theories with features associated with both priority relations. The purpose of this continuum is to provide a tool of analysis in which to move beyond the dualism of this debate and adequately capture the nuances of the design features of these two camps.

Moreover, the implication of thinking about moral and political theories as ranges on a continuum can help to highlight the nuances of the political systems associated with the priority of the right and the good. I ended Chapter 5 with a brief discussion point on this analysis, to show the complexity in thinking of categorical rules of constraint as independent of moral values, for the priority of the right. In contrast, the same difficulty arrives when viewing the priority of the good as having instrumental rules of constraint that benefit the moral ends of a political system. The aim of highlighting this relationality is to show that rules of constraints and the moral values that they promote have to be in agreement with one another, i.e., the right and the good must complement one another. In the case of justice as fairness, Rawls creates categorical rules of obligations that are dependent on and promote the moral values of liberalism.

It is this shared commitment to the moral ideas of liberal democratic tradition seen in the promotion of political values of liberty, equality, and equal opportunity that forms the basis of a non-comprehensive collective good. This is why, in Chapter 3 I suggested that justice is the first virtue of all associations, as political values must be upheld across all domains of

life. This understanding of moral unity in justice as fairness is a very different kind of moral community than that suggested by theorists of the good, such as MacIntyre and Sandel. It is not moral unity founded on a singular comprehensive conception of the good. Instead, it is founded on the commitment to political values that are a partial set of moral ideas grounded in the liberal tradition that citizens from diverse comprehensive doctrines can uphold and align with their moral, metaphysical, or religious truth claims. Thus, I suggest that Rawls's requirement for the right and the good to complement one another by reshaping the good to the constraint of the right offers a new possibility of a social order.

The significance of this thesis lies in the fact that I develop an alternative interpretation of the political conception of justice as fairness to the current paradigm of Rawlsian scholarship. I argue that Rawls's political conceptualisation of justice as fairness makes unconditional requirements for citizens in terms of their rational plans of life. The requirement of the right constraining the good necessitates that the political values of justice are internalised in the most intimate places of persons lives, such as in their family. The outcome of this is that Rawls does in fact provide the theoretical foundation for which a liberal theory of justice can protect the most marginalised citizens in the non-public sphere of society such as women, but the argument could be extended to issues surrounding LGBTQ+ individuals, or persons discriminated against because of their religion, nationality or immigration status.

Moreover, the fact that I in this way demonstrate how justice is a collective non-comprehensive good is significant since I argue that Rawls develops a united society, one founded on non-comprehensive political values of the liberal democratic tradition. Thus my interpretation of Rawls's complementary relationship between the right and the good not only shows the nuances in his theory, but highlights the complexity of the complementary relation between rules of obligations and moral values in moral and political philosophy in general, as shown by my call for the reconceptualisation of the relationship between the right and the good in terms of ranges on a continuum of structural relations between the right and the good.

The final point I want to stress is the noteworthiness of new social order stemming from the complementary relation of the right and the good and its implication on the non-public sphere. Rawls's social order will be united by a set of non-comprehensive political values, where citizens choose to alter their notion of the good to acknowledge the liberty and equality of their fellow members. When this is achieved, justice is then a possibility, as a result of the non-comprehensive moral unity formed by citizens' commitment to the political values. In

achieving this, citizens then know a good that they could never know alone, the good of justice and the pride that comes from collective participation in this achievement. In light of this interpretation, and the possibility of a new but very different social order, i.e., justice as a non-comprehensive collective political good, then, perhaps Rawls could – doubtless, very different – be the Saint Benedict MacIntyre claims we are waiting for.¹⁷³

¹⁷³ I have interpreted this final sentence of MacIntyre’s *After Virtue*, in line with his understanding that this sentence is calling for a new social order of engagement. See *Tradistae*. 2017. A new set of social forms: Alasdair MacIntyre on the Benedict Option. Available at: <https://tradistae.com/2020/04/21/macintyre-benop/>

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