

**Justice as Fairness:
The Methodological Tension Between 'The Right' & 'The Good'**

by

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A dissertation submitted in fulfilment of the requirements for the degree

Master of Arts in Philosophy

in the Department of Philosophy at the

UNIVERSITY OF PRETORIA

FACULTY OF HUMANITIES

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29 November 2018

Acknowledgements:

I would like to thank the following persons for their essential influence they had either on my self, this work or both. Firstly, I want to thank my supervisor Professor Emma Ruttkamp-Bloem and co-supervisor Professor HPP Lötter both of which were indispensable to the fruition of this project. I am beyond thankful for their time, endless care, support, encouragement, advice and assistance over these past years. I particularly want to thank Professor Emma Ruttkamp-Bloem for her mentorship and dedicated to the growth of my academic career.

I am especially grateful for my mother Lisa Benton and her unwavering belief in me, without her I would not be the person I am today. I owe a great deal to my partner Roarke Gregory Bakker for his words of wisdom, his unending patience, kindness, love, reassurance and emotional support. I thank you for being my pillar of strength during the monotonous and difficult days.

I would like to extend my thanks to Thomas and Julia Benton, Melissa De La Motte, Dulcie Dispoto, Judy Jacquet and to the Bakker family for their support. To Chanté Kettle and Kayla Wightman, I thank you for your friendship, love and support you have shown me over these years. I owe a special thanks to Jody Davison for prompting me to pursue my curiosity with Rawls's theory of justice.

Lastly, I would like to thank all the staff and fellow colleagues in the Department of Philosophy at University of Pretoria, with special thanks to Amanda Oelefse, Mpho Tshivhase and Emma Ruttkamp-Bloem all of whom have made the department feel like home these past years. I am indebted to the department for my philosophical growth.

Abstract

This dissertation offers a critical discussion of the prioritisation of ‘the right’ in John Rawls’s theory of justice. Rawls’s theory of justice – ‘justice as fairness’ – is arguably one of the best illustrations of the prioritisation of ‘the right’ in current political literature. However, his theory has been criticised by a diversity of thinkers for its implied structural relation between ‘the right’ and ‘the good’. Some theorists argue that conceptually ‘the good’ can never be derived from ‘the right’; others argue that, even if it were possible, the social implications of such a conceptualisation would be devastating as it would result in a so-called “community of strangers” (Rorty 1988, 273).

In this dissertation, I argue that on the one hand, theories that prioritise ‘the right’ – such as ‘justice as fairness’ – enable the attractive possibility of the multiple coexistence of ‘comprehensive goods’. This is attractive as it upholds the liberating ethos: ‘I have the freedom to determine my own ends’. This possibility is attributed to the fact of neutrality, which characterises the priority of ‘the right’. The claim of neutrality is embedded in the ideal that political principles can be developed prior to and independently of any content of ‘the good’. This is then supposed to justify the claim that political principles are non-reliant on comprehensive moral ideals. In this way, the prioritisation of ‘the right’, as evident in ‘justice as fairness’, supposedly enables citizens to construct impartial universal principles that govern their society.

Yet, on the other hand, I question the degree of neutrality present in ‘justice as fairness’. I argue that ‘justice as fairness’, although its justification is independent of a singular moral truth, is not neutral concerning ‘the good’. In fact, the moral values encapsulated in the priority of ‘the right’, I argue, set the conditions of justification of all doctrines of ‘the good’ because any idea of ‘the good’ that embodies contradictory values to those encapsulated in the priority of ‘the right’ would necessarily be excluded from a Rawlsian society. Therefore, I argue that Rawls’s theory of justice cannot be said to take into account “a diversity of conflicting and irreconcilable yet reasonable comprehensive doctrines” (Rawls 2001, 34); as moral values are already implied in the prioritising of ‘the right’.

In light of how Rawls’s theory of justice is simultaneously neutral and prescriptive regarding ‘the good’, I suggest a re-problematisation of the debate on the relationship between ‘the right’ and ‘the good’. The literature on theories that prioritise ‘the right’ or ‘the good’ seems

to imply such theories either embody the one or the other methodological approach. I argue that this debate has been presented as a false dichotomy and, as such, the debate itself seems to be exhausted, because it creates a kind of natural impasse. Therefore, I suggest recasting the debate in terms of representing 'the right' and 'the good' as two methodological positions on a continuum, that are at the same time both more or less gradually similar and divergent from one another. The purpose of this continuum is to demonstrate that notions such as neutrality, objectivity and comprehensiveness are not clear-cut.

Key Terms:

'The right', 'the good', justice, morality, Rawls, 'justice as fairness', liberalism, communitarianism, deontology, teleological, utilitarianism, social contractarianism, constitutional democracy, comprehensive doctrines, objectivity, Kantian moral theory.

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Chapter 1: Introduction

1.1 The Controversy of the Justification of Justice

“Justice is the first virtue of social institutions as truth is of systems of thought,” John Rawls (1999, 3) famously stated in his *magnum opus*, *A Theory of Justice*. It is difficult to disagree outright with this statement. Nevertheless, the controversial question of how justice can or should be justified continues to plague philosophers. The two dominant approaches to this question, for the last 2 500 years¹, have been to either justify principles of justice in terms of a universal method of justification or to argue vehemently against the possibility of accomplishing such a justification in terms of a single method.

Let us consider the first option. Advocates of this approach strive to affirm or construct what is just from a detached or impartial perspective; in other words, they argue from an Archimedean point of justification for justice or morality. This universalist justification is epitomised in the 18th century during the intellectual movement of the Enlightenment and thus has a long tradition within moral and political philosophy. Examples of this approach can be found in, for instance, Hume’s ‘judicious spectator’, Adam Smith’s ‘impartial spectator’, Rousseau’s ‘General Will’, Kant’s ‘Categorical Imperative’ and Locke’s account of natural laws. Where theorists such as these, aimed to affirm or construct moral or political laws by relying on the same objective methodology used by the natural sciences when trying to solve questions of justice or morality, they turned to discovering moral truths, irrefutable laws or natural laws as the justification for moral and political principles. It is this desire for universal detachment as a methodological approach to the question of morality or justice that is encapsulated by theorists who prioritise ‘the right’.

This objective methodological approach for the question of justice is associated with the philosophical tradition of liberalism. Liberal theory as a political doctrine is premised on the idea that persons have an inviolable freedom and equality that has to be unconditionally upheld; as such, allowing persons the freedom to construct their own moral doctrines is a fundamental aspect of a just society (Rawls 1996, 12). Given this, liberal theorists such as Rawls appeal to an objective method of justification for justice to the degree that they argue that society should not be structured in such a way that political principles are prescriptive of

¹ This tension between a universal method of justification versus a particularistic method of justification can be traced back in the Western tradition to Plato and Aristotle, whereby Plato argued in favour of a universalistic methodological approach whereas Aristotle argued in favour of a particularistic methodology.

moral doctrines, as this undermines the freedom of persons to choose their own morality. Rawls (1996, xxiv) traces the rise of moral pluralism in Western history to the Reformation, arguing that the rise of religious pluralism in the 16th century generated further pluralistic thought in terms of philosophical and moral ideals.

In opposition to the rational objective methodology epitomised in the Enlightenment intellectual climate and liberal political theory, postmodern movements of the mid to late twentieth century argued against the possibility of affirming or constructing moral or political principles using an abstract rational method of justification. In general, thinkers such as Heidegger, Derrida, and Foucault argue that the possibility of developing or discovering an Archimedean point of reference is a utopian ideal. As such, they criticise the Enlightenment idea that the individual has the possibility to withdraw themselves from their own ontological context.

In light of this, moral and political theorists of the late twentieth century critique the universalist methodological approach to justice. Theorists such as Alasdair MacIntyre², Michael Sandel³, Charles Taylor⁴ and Michael Walzer⁵ argue that the self is fundamentally constituted by its ontological context, meaning that the self's identity is dependent on its social and political circumstances. To develop a view of the self independently of its socio-political facticity would be to misrepresent the nature of human beings, firstly. Secondly, insofar as moral and political principles are said to apply to a particular context, these theorists argue that the defenders of the methodological approach for justice have to acknowledge this fundamental ontological point of orientation.

Hence, they dispute the idea that justice can be justified according to moral truths, irrefutable laws, or natural laws. For them, these laws, or so-called moral truths, are themselves socially

² Refer to: *After Virtue* (2007) and *Whose Justice? Which Rationality?* (1988).

³ Refer to: *Liberalism and the Limits of Justice* (1982) and 'The Procedural Republic and the Unencumbered Self' (1984).

⁴ Refer to: 'Atomism' in *Philosophy and the Human Sciences* (1985), *Sources of the Self: The Making of the Modern Identity* (1989) and *Ethics of Authenticity* (1991).

⁵ Refer to: *Spheres of Justice: A Defence of Pluralism and Equality* (1983), 'The Communitarian Critique of Liberalism' (1990) and *Thick and Thin Moral Argumentation at Home and Abroad* (1994). I have chosen to mention these theorists as their works are some of the most influential in this current debate. Other theorists that are associated with this debate are: Daniel Bell, see *Communitarianism and Its Critics* (1995). Amitai Etzioni see *New Communitarian Thinking* (1995).

constructed. And as such, these theorists have been labelled as ‘communitarian’ by the broader philosophical community in that they all share in the critique of justifying moral and political principles from a detached, objective, impartial, or abstract view. To the degree that these thinkers share in the same intellectual label, namely communitarianism, they all uphold a similar critique.

They critique the liberal view that individuals are isolated selves that have the ability to abstract themselves from social attachments.⁶ Moreover, they criticise the fact that a liberal society holds no publicly shared conceptions of ‘the good’ (i.e. that members of society share no common moral values). As a result, communitarians critique liberals for developing a society that is fragmented, as the only publicly recognised values that all persons share in a liberal society are political values. Communitarians critique liberals for “prioritising procedural justice over substantive conceptions of the good” (Walzer 1990, 9). In other words, it could be argued that communitarians critique liberals for structuring their moral and political theories by prioritising ‘the right’ over ‘the good’.

Thus, communitarian theorists argue that the priority of ‘the right’ as a method of justification is an incorrect method for justifying moral and political theories or principles. The priority of ‘the right’ undermines the particularism they see as present in the notions of justice and morality. Instead, MacIntyre, Sandel, Taylor and Walzer could be said to align themselves with the methodological position of the priority of ‘the good’, inasmuch as they argue that justice must be justified in line with the morality of a particular social context.

Therefore, this debate between justifying justice from either an objective universal method of detachment or from a particular social context, taking into account the contingent factors of society and citizens’ moral sentiments, has a long tradition in moral and political philosophy. This universal vs. particular debate is epitomised in the communitarian critique of liberalism. This communitarian liberal debate resurfaced in philosophical literature in the 1980’s. It is often suggested that Rawls’s work *A Theory of Justice* (1971) was the contextual background that gave rise to these debates (e.g., Mulhall & Swift 1992, 1) under the guise of the debate between the priority of ‘the right’ vs. the priority of ‘the good’.

⁶ Throughout this dissertation, I refer to MacIntyre, Sandel, Taylor and Walzer collectively when I refer to their works that have shared characteristics and at times where they differ from one another I refer to them individually and discuss the specific features of their theories separately.

Rawls's theory of justice, 'justice as fairness'⁷ is arguably one of the best illustrations in current political literature of the prioritisation of 'the right'. Therefore, Rawls's 'justice as fairness' has been heavily criticised by a diversity of thinkers for the structural relation he posits between 'the right' and 'the good'. As stated, Rawls first introduced this priority relation in his landmark publication, *A Theory of Justice* in 1971, whereupon he continuously revisited the topic up until his last work, *Justice as Fairness: A Restatement* in 2001. To understand the significance of the priority relation Rawls develops between 'the right' and 'the good', allow me a few background remarks.

1.2 'The Right' and 'the Good' Defined

In *A Theory of Justice*⁸ Rawls (1999, 44-45) states that: "The two main concepts of ethics are those of the right and the good ... The structure of an ethical theory is, then, largely determined by how it defines and connects these two basic notions". 'The right' and 'the good' can be outlined as follows: Rawls's 'justice as fairness' is concerned with developing basic social institutions that will govern a society in a just manner (Rawls 1996, 175). For Rawls, basic social institutions are just when they embody impartiality. 'The right', for Rawls, is representative of justice in society; Rawls characterises 'the right' as that which is objective. It is objective as he believes the principles that will govern the basic social institutions are based on an *a priori* abstract source of reasoning. Therefore, 'the right' is in essence objective, because it is independent of subjective influences which are the comprehensive ideas of 'the good' that people subscribe to, such as for instance a religious preference.

For Rawls (1987, 9), 'the good' is representative of morality or individual happiness in society. Rawls (1988, 267), states that a necessary condition of liberal thought is that it takes into account plural conceptions of 'the good'. Hence 'the good' (or its contents and conditions of realisation), according to Rawls, should never be prescribed to persons as 'the good' can only be chosen in line with the individual's circumstances in mind. It can therefore be said that 'the good' is founded on *a posteriori* not *a priori* reasoning. Thus, the justification of 'the good' is based on empirical reasoning. 'The right' and 'the good' relate in

⁷ Throughout this dissertation, I use the term 'justice as fairness' to denote Rawls's political philosophy in general throughout his works, as the term 'justice as fairness' is the name he gives to his conception of justice (Rawls 1999, xi).

⁸ This book is the revised version of *A Theory of Justice* first published in 1971.

the following manner: 'the right' is independent of and yet enables the maximisation of 'the good', whereas 'the good' must conform to the boundaries created by 'the right' (Rawls 1999, 21-22). What this implies is that all persons share the same conception of justice, which is independent from yet mediates the plural conceptions of 'the good' individually chosen within society.

According to Rawls, theories that prioritise 'the right' are divergent in content but structurally similar in that they derive what is moral or just independently of the contingent aspects of society or of persons. These theories are often associated with an impartial, neutral, or universal process of reasoning in determining what is just or what is moral. While, on the other hand, theories that are said to prioritise 'the good' differ in content but are structurally similar in their determination of morality or justice from a particular viewpoint. Rawls associates moral and political theories that prioritise 'the good' with theories that generally embody the concept or characteristics of moral truth (ibid., 19). According to such theories, that which is morally acceptable in society is a result of, and hence derived from, one singular comprehensive doctrine of 'the good'. On the other hand, theories that prioritise 'the right' are theories that generally embody the concept or characteristics of moral reasonability, meaning that what is morally permissible in a society is not dependent on one singular comprehensive doctrine of 'the good'.

Furthermore, Rawls states that the teleological and deontological distinction in moral theorising is a result of the underlying relation between 'the right' and 'the good'. Teleological theories fundamentally differ in terms of how they define 'the good'. However, they are all structured in a parallel fashion; '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'. Thus 'the right' in teleological theories is always held to contingencies (ibid., 19-22).

In contrast, 'the good' is not determined independently of 'the right' in deontological theory. Instead 'the right' is determined prior to and independently of 'the good', 'the good' then is subordinated to and confined within the limits set by 'the right' (ibid.). Rawls (ibid., 29) states that 'justice as fairness' is a deontological theory, which entails the structural feature of prioritising the 'right' over 'the good'. Rawls, throughout many of his works, in reference to this priority relation, states that "the right draws the limit and the good shows the point" (Rawls 2000, 231). Thus 'the right' establishes the just conditions in which one can then in

the private 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 1999, 394).

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 dissertation. This dissertation will deal with one aspect that contrasts deontological theories from teleological ones. This aspect is the way in which each theory relates justice (i.e. 'the right') and morality (i.e. 'the good') to each other. I am only focusing on this aspect as this dissertation is guided by analysing the prioritisation of 'the right' in Rawls's 'justice as fairness'. It is important to note that when I refer to teleological and deontological theories in this dissertation, I am necessarily referring to theories that either prioritise 'the good' (in the case of teleological theories) or 'the right' (in the case of deontological theories).

Moreover, Rawls opposes classical utilitarianism as presented by Bentham⁹, Mill¹⁰ and Sidgwick.¹¹ Rawls argues that classical utilitarianism in general is a teleological doctrine inasmuch as what is just is contingent on the moral goal of happiness or pleasure. Rawls rejects the idea that a just action is permissible or not based on the consequence that action would bring about. In other words, according to Rawls, utilitarians justify justice on an empirical basis, which implies justifying a plurality of 'the right' or just standards and as such, leaves 'the right' or justice undetermined and held to contingencies. Rawls wishes to avoid the relativism implied by justifying justice on social contingent circumstances (ibid., 24-28).

On the other hand, as Rawls (ibid., 221-222) wants to secure 'the right' on a solid foundation, he finds aspects of Kant's deontological approach to morality appealing in working out 'justice as fairness'. Rawls embraces a Kantian view insofar as he agrees with Kantian *a priori* objective reasoning. Rawls adopts the Kantian necessity of abstracting individual or subjective biases when formulating 'the right'. Hence, 'the right' is a construction of reason and as such Rawls revitalises the Kantian social contract tradition, which is an embodiment

⁹ As presented in *The Principles of Morals and Legislation* (1781).

¹⁰ As presented in *Utilitarianism* (1863).

¹¹ As presented in *The Method of Ethics* (1907).

of pure practical reason alone. Thus Rawls's 'justice as fairness' formulates 'the right' on a purely rational foundation.

This rational foundation is embodied in the abstract proceduralism of the original position. 'The right' is exemplified in that which results from this proceduralism, namely Rawls's two principles of justice. Rawls characterises these two principles of justice as political imperatives as they are objective principles that constrain 'the good' (i.e. individual's desires). Due to this, Rawls's characterisation of 'the right' may be said to be Kantian in origin; Rawls's emphasis on objective principles derived from an *a priori* source of reasoning mirrors Kant's characterisation of the categorical imperative.

As a result of this, I argue that Kant is the primary philosopher that influences Rawls in his characterisation of 'the right' (Rawls 2000, 222). Yet, it must be noted that 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'? This difference in focus between these two thinkers results in them placing different emphases on 'the right'. Rawls, for instance, thinks only 'the right' and not 'the good' should be based on objective reasoning.

As Rawls's primary focus in 'justice as fairness' is to create a "moral basis for democratic institutions" (Rawls 1999, 5), he purposely states that 'justice as fairness' does not prescribe individuals with requirements for the good life. His doctrine is focused only on the political structure of a well-ordered society. Thus, Rawls argues that his theory of justice is not a fully comprehensive but only a partially comprehensive doctrine, insofar as his theory allows for persons to deliberate and decide for themselves what it means to be a moral individual. For Rawls (*ibid.*, 13) comprehensive doctrines prescribe a certain conception of the good life or certain moral ideals that influences all aspects of a person's life. Whereas a partially comprehensive doctrine prescribes certain values, virtues and ideals that only influence part of one's life, these values do not exhaust all aspects of one's life (*ibid.*, 175).

In relation to this discussion above, let me state again that the aim of this study is to investigate the prioritisation of 'the right' evident in 'justice as fairness', and more importantly, to elucidate the interconnected structural relation Rawls develops between 'the right' and 'the good'. In analysing the relationship Rawls develops between justice and morality, I analyse the place of 'the good' in a Rawlsian society. Furthermore, I respond to

the communitarian critique that theorists that prioritise ‘the right’ neglect the role of ‘the good’ in society. I demonstrate that ‘the right’ and ‘the good’ in ‘justice as fairness’ are complementary, and as such they both are essential aspects of Rawls’s theory. This means that for Rawls, the content of justice has to exemplify the core moral values that all persons of a constitutional democratic society share (ibid., 436). As such, I argue that the justification of justice is contextualised, or affirms elements of a particularistic approach of justification. In light of this, I argue that Rawls does not neglect ‘the good’ or leave it undetermined; instead, I argue the exact opposite, that ‘the right’ delimits what is and is not acceptable ideas of ‘the good’.

Hence, I argue that Rawls develops a circumscribed account of ‘the good’ insofar as the goods that can exist in a Rawlsian society do not exist unmediated. This means that all ideas of ‘the good’ must conform to the bounds of ‘the right’. Hence, any doctrine of ‘the good’ within Rawls’s theory of justice cannot exist unaltered. By ‘unaltered’ I mean to suggest that the ideas of ‘the good’ that can co-exist in a Rawlsian society have to be modified in order to adhere to the bounds of justice.

Given this, I argue that actually to refer to the goods that exist in a Rawlsian society as comprehensive goods would be misleading or does not do justice to Rawls’s view of ‘the good’. Therefore, I suggest replacing the term ‘comprehensive’ with the word *circumscribed* when referring to the acceptable doctrines of ‘the good’ that exist in a Rawlsian society. The term ‘*circumscribed goods*’ encapsulates the understanding that these so-called comprehensive doctrines of ‘the good’ are narrowly limited by ‘the right’. Throughout this dissertation (especially Chapter 2, 3 & 4) I use Rawls’s term of comprehensive doctrines to refer to the types of doctrines of ‘the good’ that can co-exist in a Rawlsian society. It is only in Chapter 5 and 6 that I then refer to *circumscribed* specifically in my critique of his term comprehensive to denote the co-existence of multiple goods.

Given this, I argue that Rawls does not develop a partial (as he suggests) or fully comprehensive theory of justice but rather a predominantly comprehensive theory of justice. Predominantly as defined by the Oxford English Dictionary (n.d.) implies the idea of “mainly or for the most part”. As such, by predominantly, I mean to infer that Rawls’s theory of justice is mainly or mostly a comprehensive theory of justice; I use the word predominantly to illustrate that Rawls’s theory of justice although comprehensive is not completely or fully

comprehensive as Rawls's theory of justice does not prescribe all aspects of a person's life.¹² With that said, I argue that Rawls's theory of justice is more prescriptive of 'the good' than it initially appears and as such the word predominantly better exemplifies the comprehensiveness of Rawls's theory of justice than the word partially. Partially is suggestive that only some moral values, virtues and ideals of Rawls's theory are prescribed whereas I am arguing that the person's core moral values, virtues and ideals are prescribed.

Thus, this study aims to illustrate that Rawls's theory of justice is a predominantly comprehensive doctrine and not a partially comprehensive doctrine as he argues (Rawls 1996, xviii). In arguing this, I demonstrate that the condition of moral reasonability (i.e. 'the right'), delimits what is morally acceptable and as such any moral doctrine that does not uphold the moral values of a Rawlsian society cannot exist in such a society. Therefore, I use the term 'circumscribed' (in Chapter 5 & 6) only when referring to the types of goods that can co-exist in a Rawlsian society. In terms of 'the right', or Rawls's theory of justice, I use the term 'predominantly comprehensive' to refer to it and not the term 'circumscribes' as 'the right' is not limited by 'the good' rather 'the right' is that which limits 'the good'. Hence, 'the right' is that which circumscribes and is not that which is circumscribed.

Given that, I argue that Rawls in fact develops a predominantly comprehensive theory of justice and a circumscribed account of 'the good' or morality – even though he prioritises 'the right'. I argue that Rawls's theory of justice although said to prioritise 'the right', relies on both universalistic and particularistic methods of justification for 'justice as fairness'. The literature¹³ on theories that prioritise 'the right' or 'the good' seems to imply such theories exist in stark contrast to one another. By 'stark contrast' I mean that the debate between that the priority of 'the right' and 'the good' is presented as mutually exclusive, whereby theorists who prioritise 'the right' are said to rely on an objective justification for justice and hence, disregard morality. Or as Forst (2002, 2-3) suggests, it is a method of justification that aims

¹² Throughout this dissertation I will explain how Rawls's theory of justice is prescriptive yet does not prescribe all aspects of a person's life.

¹³ Here I refer to R. Forst *Contexts of Justice: Political Philosophy beyond Liberalism and Communitarianism* (2002). For other literature on the debate between 'the right' and 'the good' especially, refer to the following literature S. Freeman's article entitled 'Utilitarianism, Deontology and the Priority of Right' (1994). 'On the Priority of the Right to the Good' (2011) by A.D. Kocaeli and 'Rawls on Teleology and Deontology' (1988) by W. Kymlicka.

to be “forgetful of context”, while theorists who prioritise ‘the good’ are said to rely on a particularistic justification for justice, and hence, hold justice to contingency, or as Forst (ibid.) states, theirs is a method of justification that is “obsessed with context”. Thus, I argue that this debate between the priority of ‘the right’ and ‘the good’ has been presented as a false dichotomy in the literature, as is best illustrated by Rawls’s very own theory.

In this dissertation I thus suggest a re-problematisation of the debate between ‘the right’ and ‘the good’. Instead of conceptualising the debate in terms of mutual exclusivity, I suggest recasting the debate by conceptualising ‘the right’ and ‘the good’ as two fluid ranges on a continuum, whereby the priority of ‘the right’ and the priority of ‘the good’ represent two distinct yet adjacent methodological positions, and there exists a potential for moral and political theorists to construct theories with more or less qualities of either position.

The purpose of re-conceptualising the debate is to demonstrate that the method of justifying moral or political principles is not clear-cut. It is not clear-cut, as not all theorists rely on either universalistic or particularistic methods for justifying moral and political principles. Therefore, if we conceptualise moral or political theories in terms of this dichotomised debate, we in fact run the risk of missing the nuances in the theories themselves, as we try to compartmentalise them into either the prioritisation of ‘the right’ or the prioritisation of ‘the good’ and their necessary characteristics.

1.3 Synopsis of Argument

In order to successfully evaluate the priority of ‘the right’ evident in Rawls’s ‘justice as fairness’, I begin this dissertation by giving an exposition of ‘justice as fairness’, so as to both clarify and demonstrate the methodological approach of the priority of ‘the right’. Hence, in Chapter 2 I discuss key notions of ‘justice as fairness’ to tease out the theoretical structure of the priority of ‘the right’ in terms of the content of and justification for ‘justice as fairness’. Notions discussed include: The original position, the veil of ignorance, the political conception of the person, political constructivism, primary goods, the ‘thin theory of the good’, ‘goodness as rationality’, reflective equilibrium, the ‘fixed considered judgment of justice’, the two principles of justice, ‘overlapping consensus’, ‘social union of social unions’ and lastly the notion of moral reasonability replacing the notion of moral truth. In examining these notions, I set the necessary theoretical foundation in which to examine on the one hand,

whether Rawls's theory of justice is partially, predominantly or fully comprehensive and on the other hand, to argue that 'the good' in 'justice as fairness' is in fact circumscribed.

Thereafter, Chapter 3 examines the historical tradition of the methodological approach of the priority of 'the right' vs. 'the good', in order to give context to the priority of 'the right' evident in Rawls's theory of justice. In this chapter I begin by discussing the criticism of the priority of 'the good' as a methodological approach to justice and why Rawls found the relativism of justice associated with classical utilitarianism (as presented by Bentham and Mill) unappealing. In light of Rawls's critique of the priority of 'the good', I examine moral and political theories that influenced Rawls in constructing this theory of justice with the same methodological approach. A large portion of this chapter is given to Kantian deontology in order to illustrate and discuss why theorising about justice from a detached perspective is appealing for Rawls. Furthermore, in this chapter I refer to thinkers such as Locke, Rousseau and Hobbes to illustrate the liberal political tradition, more specifically the tradition of the social contract theory as a method of justification that Rawls found significant.

Having discussed the appeal of a detached method of justification, Chapter 4 re-evaluates this appeal by highlighting the major so-called 'communitarian' critiques of theorists that prioritise 'the right'. In this chapter I give a brief exposition of arguments presented by MacIntyre, Sandel, Taylor and Walzer, whereby I analyse their separate critiques of the constitution of the liberal self and secondly their critiques of the methodological approach of the priority of 'the right'. Although each theorist develops a unique critique, they share the same underlying argument that social factors are constitutive elements of both the individual and the notion of justice. In light of these communitarian caveats, I develop a Rawlsian response in which I defend Rawls's theory of justice against these critiques.

Lastly, in Chapter 5 and 6 I conclude with a reflection on the priority of 'the right' in 'justice as fairness'. I evaluate the function, significance and the limits and possibilities for theorising about justice in terms of a prioritised relation whereby 'the right' is prior to 'the good'. In these chapters I illustrate how and why I argue Rawls develops a circumscribed account of 'the good'. Subsequently I argue that Rawls's theory of justice does not allow for the multiple co-existence of comprehensive doctrines, since his theory of justice, I argue is a predominantly comprehensive theory of justice. Therefore, I suggest replacing the use of comprehensive with the word *circumscribed* when referring to the acceptable doctrines of 'the good' that can exist in a Rawlsian society. As a consequent of this analysis of 'justice as

fairness' it is in Chapter 5 that I suggest a re-problematization of the debate between 'the right' and 'the good'. Let us now turn to an exposition of Rawls's theory of justice.

Chapter 2: An Exposition of the Prioritisation of ‘the Right’ in ‘Justice as Fairness’

2.1 Introduction

This chapter is an exposition of Rawls’s theory of justice namely ‘justice as fairness’. The aim of this chapter is to draw out the methodological position of the priority of ‘the right’ while illustrating the content of and justification for ‘justice as fairness’. In order to achieve this, this chapter addresses firstly the subject of ‘justice as fairness’ and the circumstances that necessitate a specific theory of justice. These circumstances include moral pluralism, scarcity of resources, and the liberal and democratic tradition that all contribute to set the foundation for why Rawls constructs his theory of justice with specific features.

Thereafter, I turn to a discussion of the notion of a person underlying ‘justice as fairness’. It is essential to illustrate the capacity persons have for both a sense of justice and morality and how both aspects, according to Rawls, are required for persons to be cooperating members of society (Rawls 1996, 48). Having discussed persons’ moral powers, it would be pertinent to address the fact that ‘justice as fairness’ is presented by Rawls as the result of a fair, equal hypothetical agreement. In doing this, I discuss Rawls’s rational process of reasoning in terms of his concept of the original position and its methodological tool, i.e. the veil of ignorance.

Setting out the features of the constructed procedure and discussing why such a procedure is necessary for Rawls when choosing a theory of justice, enable me to illustrate how and why Rawls wants to justify a theory of justice independently of subjective influences. Or, put more succinctly, this approach I take helps to explain why the priority of ‘the right’ as a methodological starting point is pivotal to Rawls.

Having illustrated the features of Rawls’s theory that resemble or embody the priority of ‘the right’, it then becomes important to address the place Rawls gives to morality in justifying his theory of justice. It is crucial to explicate which moral principles Rawls’s ‘artificial agents’ would find attractive given their moral sentiments and their particular features of society. In discussing which theory of justice artificial agents would choose, I mention the role of ‘the thin theory of the good’ or ‘goodness as rationality’ and the all-important method of reflective equilibrium.

Once I have illustrated why the artificial agents would choose ‘justice as fairness’, it is suitable to discuss the content of ‘justice as fairness’, the principles of justice and their

demands on the citizens of a Rawlsian society. In order to demonstrate the demands these principles of justice make on citizens, I discuss the notion of an ‘overlapping consensus’. In doing so, I explain how ‘the right’, for Rawls, restricts ‘the good’ and as such limits ‘the good’ to only the comprehensive doctrines that can affirm ‘the right’. This assists with illustrating the ‘moral community’ Rawls suggests is possible in his society. This moral community he refers to as being “a social union of social unions” (Rawls 1982, 34).

I have chosen to present the material in this way in order to illustrate to the reader the distinction between the justification for and content of ‘justice as fairness’ with the aim of showing the complex yet complimentary relationship between ‘the right’ and ‘the good’ Rawls develops. Before I turn to the circumstances of justice, an important aspect to note: Rawls throughout his career was working on bettering his theory of justice and as such continued to qualify certain aspects of his theory throughout all his works. Given this, there are certain notions that Rawls develops in his later works and certain notions that he does away with in his later works. This exposition of ‘justice as fairness’ draws on both Rawls’s early and his later works in order to present a comprehensive account of ‘justice as fairness’. At times, in footnotes of this chapter, I will explain when Rawls introduced or replaced a notion in his explanation of ‘justice as fairness’. Let us then turn to the political circumstances that necessitate a specific theory of justice.

2.2 How the Circumstances of Political Justice Necessitates a Theory of Justice

Rawls develops ‘justice as fairness’ from a fundamental assumption, namely that a just society is one that is characterised as a “fair system of social cooperation” (Rawls 1999, xv). Rawls views the act of entering into society itself as “a cooperative venture for mutual advantage” (ibid., 109), as persons find society appealing because the act of social cooperation increases their life prospects. Yet, Rawls acknowledges that society in general is characterised by both a “conflict and an identity of interests” (ibid.) between persons. It is precisely this conflict and identity of interests that, according to Rawls, engenders the necessity for a theory of justice and as such he refers to the background historical and social conditions that characterise society in general as the circumstances of political justice.

Prior to unpacking Rawls’s notion of the circumstances of political justice, it is important to note that Rawls, throughout *A Theory of Justice* (1999) and *Political Liberalism* (1996)¹⁴,

¹⁴ This book is the revised version of *Political Liberalism* first published in 1993.

makes reference to the circumstances of justice. It is only in *Justice as Fairness: A Restatement* (2001) that he adds the term ‘political’ to the notion of the circumstances of justice. It may be that he adds the term ‘political’ to solidify the structural boundaries between ‘the right’ and ‘the good’ within ‘justice as fairness’.

Rawls in his early works, specifically in *A Theory of Justice* (1999, 109-110), categorises the circumstances of political justice into objective and subjective circumstances. Moderate scarcity is representative of the objective circumstances, as it accounts for the general fact that one is born into a society that has a finite pool of resources, which all persons, to some extent, need to make use of (ibid.). The need for a theory of justice arises out of the objective circumstances of political justice as there arises the need for society to secure the just distribution of resources over a lengthy duration of time in order to prevent the accumulation of the majority of resources in the hands of the few (ibid.). On the other hand, the compatibility and incompatibility of persons’ interests are constitutive of the subjective circumstances of political justice, and account for the harmony and conflicts that arise within society between persons who hold both parallel and conflicting aims and values (ibid., 110).

Rawls retains the condition of moderate scarcity as the primary objective circumstance of political justice of a modern democratic society in his later works, specifically in *Justice as Fairness: A Restatement* (2001, 84). While Rawls here re-emphasises the plural nature of the subjective circumstances of political justice, he states that moral pluralism is the defining subjective circumstance to denote the social condition of a modern democratic society (ibid.). Furthermore, Rawls, in ‘Priority of the Right and Ideas of the Good’ (1988, 267), refers to the condition of moral pluralism as an ever-present hence stable feature of modern democratic societies. Moral pluralism denotes the general feature of conflicting values and life aims of persons in society and as such characterises society as containing a multitude of conflicting moral sentiments and ‘considered judgements of justice’ (Rawls 2001, 84). More specifically, moral pluralism refers to the existence of multiple philosophical, moral, or religious comprehensive doctrines that co-exist with one another within a modern democratic society (ibid., 3-4).

According to Rawls (1996, 175), comprehensive doctrines hold diverse arguments as to what are the ideal values and virtues that persons should embrace in order to give meaning to their lives as well as the ideal approach to the social organisation of society. According to Rawls, (as stated in Chapter 1), a comprehensive doctrine can either be fully comprehensive or

partially comprehensive (ibid., 13). A fully comprehensive doctrine prescribes to persons certain values, virtues and ideals which influence every aspect of that person's life, whereas a partial comprehensive doctrine prescribes certain values, virtues and ideals that only influence part of one's life, but these values do not exhaust all aspects of one's life (ibid.). An important characteristic to note, according to Rawls, is that in order for a doctrine to be considered partially comprehensive its sphere of influence must extend beyond the realm of the political, hence it must prescribe non-political ideals (ibid.).

Rawls states that moral pluralism is not only a contingent feature, but also a permanent feature of a modern democratic society. This statement is due to the fact that Rawls firstly argues that reasonable pluralism is a natural resulting feature that stems from the shift in Western moral and political thought which can be traced to the Reformation period in history as stated (ibid., xxiv). The rise of religious pluralism in the 16th century later generated further pluralistic thought in terms of philosophical and moral ideals of society. Rawls argues that religious pluralism engendered a society in which all persons recognised themselves and others as having the freedom to exercise their use of reason in their chosen manner resulting in the natural pluralistic makeup of modern democratic society (ibid., xxvi & 35-36). Secondly, Rawls, argues that it would be impossible to eliminate moral pluralism from modern democratic society naturally; the only way in which pluralism could be eradicated is by the state oppressively enforcing one comprehensive doctrine on society (Rawls 1987, 4 & Rawls 2001, 84).

Moral pluralism – a permanent condition of modern democratic culture – prevents persons from being able to unanimously agree on a moral order of values or a moral authority. Persons in a modern democratic society understand that the justification of society itself cannot be dependent on, for instance, religious authority or a fixed understanding of a natural societal order (Rawls 2001, 15 & 84). Therefore, Rawls argues that a modern democratic society cannot be unified by any one comprehensive doctrine; instead social unity has to have another foundation for its justification (Rawls 1985, 223). The only way social unity in a modern democratic society can be achieved, according to Rawls (1988, 253), is by developing a justification for principles of social cooperation that are independent of citizens' particular comprehensive doctrines. Any theory of justice rising out of these objective and subjective circumstances has to be able to mediate this plurality of comprehensive doctrines without prescribing or favouring one particular comprehensive doctrine while promoting a fair distribution of finite resources (Rawls 1996, 109 & 226).

In this way, the circumstances of political justice account for the specific content and structure of ‘justice as fairness’. How Rawls proposes that principles of social cooperation can be agreed to, independently of persons’ appeal to comprehensive doctrines and how these principles manage conflicting claims within society will be illustrated in Section 2.6 in reference to the constructed procedure of reasoning. Prior to this, it is important now to address what aspects of society the agreed upon principles of justice apply to and why this is the case.

2.3 The Basic Structure of Modern Democratic Society as the Primacy of Justice

If, as Rawls suggests, it is impossible to create a stable agreement that embodies particular moral, philosophical or religious comprehensive values (Rawls 1987, 4-5), then, he suggests, the only way the principles of justice can be representative of a stable agreement is if the aim of the principles of justice themselves are morally, philosophically and religiously neutral (Rawls 1996, 192-193). By ‘neutral’ Rawls means to imply that a theory of justice and its principles must be able to be upheld by all citizens of a modern democratic society independently of the comprehensive doctrines that they subscribe to. In this way, Rawls states that a theory of justice must be justified on neutral grounds, meaning that its justification must not invoke or outright promote any comprehensive doctrine from the start (ibid., 193). This is not to suggest that Rawls characterises the content of the principles of justice or the procedure of justification as neutral (ibid.). Both the content and the procedure have what Rawls refers to as “moral force” (Rawls 1999, 507). How the content and procedure of justification have “moral force” (ibid.) will become clearer towards the end of this chapter. But for now, let us return to understanding how the principles of justice are neutral in aim.

Rawls characterises the principles of justice as embodying neutrality by characterising the principles of justice as political principles in the sense that they embody political aims. Political aims are the general aims all persons in a society share independently of their moral, philosophical and religious aims and values (Rawls 1996, 223-227). As the principles of justice embody the political aims of all persons they must be applied to the political sphere of society as it is this sphere that contains the public institutions that account for the formation of social cooperation within society (ibid., 11).

Rawls states that a theory of justice and its principles must apply to the basic structure of modern democratic society (Rawls 1977, 159). The basic structure of modern democratic

society, in general, is the term Rawls uses to refer to the fundamental public political structures that constitutes the public organisation of society (ibid.). More specifically, Rawls states that the basic structure of modern democratic society is comprised of the following major institutions: The political constitution, economic principles, social organisation, and current legal forms of property (Rawls 1999, 6). Rawls argues that his theory of justice, ‘justice as fairness’, must be concerned first and foremost with the basic structure, as it is the basic structure, according to Rawls, that characterises the form of social cooperation within society. The basic structure determines the just standards and distribution of resources and consequently the entitlements and the arrangement of inequalities that ensue within society itself (Rawls 1977, 161 & Rawls 2001, 51 & 55).

Due to this, the basic structure of society significantly influences a person’s life prospects as it impacts the arrangement of the contingent factors of a person’s life within society. Such factors include a person’s social class, natural talents and their good or bad fortune which in turn impacts a person’s ability or lack thereof, to cultivate certain dispositions and aspirations (Rawls 2001, 55-56). Moreover, the basic structure impacts on the ability persons have to uphold their comprehensive doctrines and carry out their chosen ends (Rawls 1996, 269). Therefore, as a person’s self-actualisation is dependent on the basic structure of society, the composition of the basic structure of society is fundamental in promoting a just and stable society. Thus, as these institutions control a person’s life ends, according to Rawls, he aims to develop basic social institutions that are just, in that they allow persons the best possible life chances without prescribing ultimate outcomes for their own life choices (Rawls 1996, 175). Therefore, for Rawls, the basic structure of society has to be the focus of his theory of justice.

Now that I have addressed why there is a need for a theory of justice and what the subject of justice is, it is important to illustrate Rawls’s conception of the person, in order to explain how persons, according to Rawls, have the ability to develop a conception of justice. This will lay the necessary foundations for explaining how and why ‘justice as fairness’ is a result of a fair and equal agreement between citizens of a modern democratic society.

2.4 The Conception of ‘the Person’

The way in which Rawls develops a conception of the person is a crucial aspect of his work, as it enables him to demonstrate how persons are able to cooperate in a free, equal and fair society. Rawls states that persons have a moral personality that is constituted by their two distinct independent moral powers. The one moral power accounts for a person’s moral

capacity, the other accounts for their sense of justice. Rawls, in his later works, specifically *Political Liberalism*, refers to “citizens’ moral powers of the reasonable and the rational” (Rawls 1996, 48). By this statement, Rawls suggests that each distinct moral power accounts for and is connected to, two distinct aspects of persons, these aspects being the rational and the reasonable (ibid., 48). Both these powers are connected to and work in combination with two distinct and independent forms of reasoning (non-public and public reason). Hence, they establish two forms of the identity of the person: Moral (non-public) and political (public) identity.

Both moral powers are distinct and independent from each other as the content of each moral power is exclusive to that particular power, but Rawls’s conception of the person is represented as a unified self, albeit made up of two dichotomised aspects. It is precisely these dichotomised features of the person and the way in which they work in harmony with one another that express how persons have the ability for social cooperation in a Rawlsian society. I will now discuss Rawls’s conception of the person as a specifically political concept as opposed to a metaphysical or philosophical conception. Thereafter I discuss the two specific features of Rawls’s political conception of the person, namely the sense of justice and that of moral reasoning.

2.4.1 Political Conception of ‘the Person’

As stated, Rawls’s political philosophy endorses a specific conception of the person as free, equal, rational and reasonable. Prior to discussing how Rawls characterises persons with the above-mentioned qualities, it is important to address the fact that this specific conception of the person is a political and not a philosophical or metaphysical conception, a statement that Rawls has continued to argue for and qualify throughout his works.¹⁵ Rawls argues that his conceptualisation of the person is a political conception, as it is not dependent on a certain philosophical, religious or metaphysical theory which prescribes a specific view of the self,

¹⁵ Rawls’s view of the self has been one of the greatest points of contention in his work that many theorists have critiqued him for. In Chapter 4, I discuss some of the critiques of Rawls’s view of the self that has been raised by thinkers such as Alasdair MacIntyre, Michael Sandel, Charles Taylor and Michael Walzer. For now, it is important to note that Rawls in his early works such as *A Theory of Justice* (1999, 225-226), develops a view of the person that is grounded on the Kantian view of the self. In his later works, he chooses to move away from this by instead grounding his view of the self on the view of the self ‘latent in historical democratic tradition’ rather than the Kantian philosophical view of the self (Rawls 1996, 175). It is because of this that he refers to the self as a political self insofar as it is representative of a political tradition.

i.e. Rawls's account of the person is not based on a comprehensive doctrine of 'the good' (Rawls 2001, 19).

Instead, Rawls's conception of the person is political as he characterises the person with the most general normative assumptions, so that his conception of the person is compatible with various fundamentally opposed philosophical, religious and metaphysical theories that, Rawls takes, is an ever-present stable condition of modern democratic society (ibid., 84). By Rawls creating a conception of the person that is general in its normative characterisation, he develops a conception of the person that is only partially comprehensive as it prescribes the basic essential overarching features that is sufficient for all persons to have in order for them to be free and equal cooperating members of a society (Rawls 1999, 442).¹⁶ Yet this prescribed conception of the person is general enough, that all comprehensive doctrines of 'the good' are able to appeal to both this political conception of the person, while at the same time appealing to their own specific philosophical, religious and metaphysical theory of the self, without conflict.

Rawls views the fact that persons have general normative features – persons as free, equal, rational and reasonable – as sufficient for persons having the ability and desire for social cooperation (Rawls 1985, 233). Prior to explaining how this general normative characterisation of the person accounts for and justifies persons as having the ability and desire for social cooperation (discussed in the next section), it is important to note that as Rawls's political conception of the person proposes that persons have the ability for social cooperation, persons are to be viewed as citizens of a society. Due to this, Rawls's conception of the person is specifically a political conception of the person as a citizen. Having addressed how Rawls develops a political conception of moral persons as citizens, I now discuss how Rawls's characterisation of the person – as free, equal, rational and reasonable – enables persons to be socially cooperating members of society by considering the two kinds of capacities their moral power bestows on them.

2.4.2 The Capacity for the Sense of Morality

¹⁶ For further discussion of the idea of sufficiency of moral personality of persons refer to Section 77 or more specifically pp. 422 of *A Theory of Justice* (1999).

Rawls argues that citizens are free, equal, rational and reasonable persons due to being endowed with certain mental facilities, namely moral powers, as previously stated. Rawls categorises a person's moral powers as having two distinct roles. Firstly, the moral power which accounts for a person's *moral capacity*, accounts for a person's ability to rationally develop, pursue, adjust, act from and make judgements on their chosen conception of 'the good' (Rawls 2001, 19). 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).

A person's conception of 'the good' is informed by their chosen rational plan of life, which consists of a system of chosen prioritised ends. A person's choice of ends is influenced by firstly, their individual desire to realise those ends in and for themselves. Secondly, persons are moved by feelings of loyalty and devotion that give rise to feelings of duties and obligations towards certain associations, and as a result a person's chosen end (in this second instance) is a product of their affiliation to an association (Rawls 1985, 233). Given this, a person's good is essentially characterised by means-end reasoning, as the choice of their good and the ends it entails are influenced by their subjective existence (Rawls 1996, 50-51). In this way, a person's good is an embodiment of their self-interest, which is not to say that all their chosen ends are for their sole benefit. Some ends may have no benefit to themselves, but their good and their system of ends embody self-interest as their good is a direct result of their own particular choice (ibid.).

Due to the fact that citizens are seen to have the moral power that endows them with the independent ability to determine and revise their own conception of 'the good', rather than adopting a permanent conception of 'the good' that is predetermined by an external source, citizens are considered free persons (Rawls 1985, 241-40 & Rawls 2001, 22). The implication of citizens being able to determine their own good is that citizens see themselves as the legitimate source for their chosen conception of 'the good' (i.e. for their moral identity). This naturally leads to the second way in which citizens view themselves as free, in that they view themselves as "self-authenticating sources of valid claims" (Rawls 2001, 23). This means that citizens see themselves and others as having the authority to make claims on the basic institutions of society. This is the case as the claims made by citizens are seen to hold weight due to the fact that the claims themselves stem from the duties and obligations that result

from the citizens' chosen good. In this sense, citizens have the mutually recognised freedom to make claims on the public institutions of society in order for society itself to aid citizens in their fulfilment of their good (Rawls 1985, 242 & Rawls 2001, 23).

Furthermore, a person's ability to develop or act from a conception of 'the good', Rawls refers to as citizen's exercising their non-public use of reason (Rawls 1996, 220). As a person's conception of 'the good' is characterised by a subjective, means-end form of reasoning, so too is non-public reason. Due to non-public reason being conditional by nature, its expression varies in relation to how individuals and diverse associations – such as professional societies, religious and academic institutions – reason according to their own values (ibid.). Non-public reasoning describes how citizens and associations reason within the non-public domain of society, namely, civil society. This form of reasoning, according to Rawls (ibid.), accounts for the development of the 'background culture' of a modern democratic society. Rawls argues that non-public reasoning is a form of reasoning restricted to the social domain of society, meaning that it is a form of reasoning that should not be used when reasoning within the political domain of society (ibid.). In Section 2.5 of this chapter I discuss how Rawls argues it is possible to develop a theory of justice without relying on non-public reasoning.

Rawls suggests that it is important to not rely on non-public reasoning, because moral reasoning requires one to appeal to some comprehensive doctrine that prescribes the highest value of human life. As a result, this form of reasoning is relative as it is dependent on subjective aspects of a person's moral, philosophical or religious identity (Rawls 1985, 241). If Rawls wishes to develop a conception of justice for a democratic society taking into account moral pluralism as a stable fundamental aspect of modern democratic society, for him, then, public society has to be as morally neutral¹⁷ as possible in order to allow for a plurality of moral doctrines to co-exist, as previously mentioned. This is precisely why Rawls creates a necessary connection between citizens having the capacity for 'the good' and citizens exercising their non-public use of reason, as it characterises their non-political aims, which is distinctive of their moral identity i.e. their non-public identity. Insofar as citizens are represented with the above features, Rawls states that they are seen to embody the rational aspect of the person (Rawls 2001, 21-22).

¹⁷ As stated before, by morally neutral, Rawls means that the principles of justice must not rely on a comprehensive doctrine for their justification (Rawls 1996, 193).

2.4.3 The Capacity for a Sense of Justice

The other aspect of the moral personality of citizens is constituted by the other moral power that accounts for a person's capacity for a '*sense of justice*'¹⁸ (Rawls 1963, 282). A capacity for a sense of justice suggests that persons have the ability to rationally develop, pursue, revise, make judgements, and act from a conception of justice (ibid.). In other words, this moral power accounts for citizens' ability to put forward and uphold principles of justice, which express the standards all citizens view as necessary for society to be representative of a fair system of cooperation (Rawls 1996, 49). As citizens wish to develop a society in which all persons can fairly benefit from one another's cooperation, their motivation to exercise their sense of justice is characterised by the idea of reciprocity (ibid., 50).

The idea of reciprocity describes the mediation between two separate ideas, the idea of impartiality and the idea of mutual advantage, when mediated with one another it explains how citizens are seen to be mutually disinterested persons in the public domain of society. Citizens are mutually disinterested as they are motivated by the general good of society and not by their own comprehensive doctrines of 'the good' (the idea of impartiality), while, at the same time, they wish to secure themselves and others the best possible opportunity to achieve their own ends (the idea of mutual advantage) (ibid.). As citizens have the ability to reason about a conception of justice from a mutually disinterested position, they are seen to be exercising their public use of reason.

Public reason refers to the form of reasoning citizens appeal to within the public domain of society, which Rawls refers to as the political aspect of society, and the content of this reason is public as it addresses the political aims of citizens. In contrast to the plural nature of non-public reason, public reason, according to Rawls, has only one form (ibid, 220). This is due to the content and the nature of public reason itself. Public reason is universal in essence in that citizens reason about justice from a mutually disinterested position. How it is possible for citizens to reason from an objective perspective is demonstrated in the discussion of the original position in Section 2.5-2.6 of this chapter. For now, it is important to note that public reason is a form of reasoning restricted to the public domain of society and as such it is an attribute of citizens' political or public identity.

¹⁸ Refer to Rawls's article 'The Sense of Justice' (1963) for further discussion on the sense of justice as an essential element of the moral psychological makeup of the person.

Citizens are characterised as having a public or political identity to the degree that they are seen to be able to freely and equally exercise their capacity for a sense of justice (Rawls 1996, 213). Citizens appeal to their public reason when deliberating about the general good of society, which involves deliberating about fundamental issues of justice such as how to assemble the basic structure of society in such a way that it is able to serve the general chosen ends of society (ibid., 213).

When citizens deliberate about fundamental issues of justice and morality in society, there always exists a possibility for disagreement, and the root of this disagreement Rawls refers to as the burdens of judgement (ibid., 54-56). The burden of judgement that applies to the rational aspect of the person (their capacity for a sense of morality) refers to the fact that citizens on the one hand, are moved by their subjective aspects of their life to prioritise certain ends over others. On the other hand, the burden of reasonable judgments refers to the difficulty citizens face when having to assess other citizens' claims in relation to their own claims, as well as citizens assessing other citizens' claims in relation to their own and others' sets of value systems (their capacity for a sense of justice) (ibid., 56). For example, a citizen's judgement of the proposed principles of justice or any fundamental societal issue may be influenced by the strength or weakness of other citizens' claims within society, i.e. by their life experience or by their values and associations which they appeal to (ibid.). Or persons may agree about the necessity of certain values but disagree on their weight, their application or basis of justification, resulting in fundamental disagreements (ibid.).¹⁹

In Section 2.9.1 of this chapter, I return to the discussion of the burdens of judgement in order to show how Rawls suggests that it is possible to mediate the disagreement between citizens of a modern democratic society. The need to mention the burdens of judgement with the discussion of the conception of the person is to show the possibility for reasonable and rational agreement. More importantly, it illustrates that reasonable and rational disagreement is an inherent feature of citizens as far as they are seen to be characterised as reasonable and rational persons. Rawls characterises citizens as reasonable persons due to the fact that they are seen to have the capacity for a sense of justice, which they express via their use of public reason (Rawls 1980, 532 & 547) – and as mentioned, he characterises persons as rational in the sense of them having the capacity for a sense of morality.

¹⁹ For a comprehensive breakdown of the sources of the burdens of judgement refer to Section 2 of Lecture II entitled the burdens of judgement pp 54-58 in *Political Liberalism* (1996).

Rawls expresses persons' freedom and equality in terms of both their capacity for a sense of justice and their capacity for 'the good'. Rawls states citizens are seen to be free, as they are seen to be the sole authority of their chosen good in their non-political life (Rawls 2001, 23). Secondly, Rawls argues, that citizens are free insofar as they have the ability to adjust their conception of 'the good' (i.e. their final ends, aims, desires) in order to ensure that their good is reasonable (Rawls 1980, 544). Meaning, that they align their good with what they can actually pursue within their society. Thus, not only do citizens have the freedom to develop a reasonable good, they too have the freedom not only to put forth claims, but also to hold back unreasonable claims of justice (Rawls 1985, 243-244). Lastly, as citizens are seen to have the freedom to develop some reasonable good and reasonable claims of justice, they are seen to be responsible for how both their good and the ends it entails as well as their claims of justice are to be assessed by others (ibid., 243).²⁰ Rawls argues that citizens are considered equal persons due to the fact that, firstly, all persons share the same moral powers, and secondly, persons share these moral powers to more or less²¹ the same degree (Rawls 1996, 34). This enables citizens to view themselves as having political equality to the degree that they have more or less the equal ability for social cooperation as all other persons (Rawls 2001, 20).

Furthermore, Rawls, in *A Theory of Justice* (1999, 444), develops a foundational requirement for equality between all persons. Rawls states:

“All we have to do is to select a range property (as I shall say) and to give equal justice to those meeting its conditions. For example, the property of being in the interior of the unit circle is a range property of points in the plane. All points inside this circle have this property although their coordinates vary within a certain range. And they equally have this property, since no point interior to a circle is more or less interior to it than any other interior point” (ibid.).

²⁰ This last aspect of how citizens are responsible for their chosen good is mentioned in numerous works. Rawls mentions in his earlier works such as, 'Justice as Fairness: Political not Metaphysical' (1985, 243), 'Kantian Constructivism in Moral Theory' (1980, 545) and in his later works such as *Political Liberalism* (1996, 33). However, Rawls does not make reference to this third aspect of freedom in his last work and *Justice as Fairness: A Restatement* (2001).

²¹ Refer to the discussion of the range property in the next paragraph which illustrates Rawls's argument that all persons are equal insofar as they share more or less the same necessary capacities of both the sense of justice and moral reasoning.

If we interpret the society as the boundary of the circle and each person as an interior point of the circle, Rawls is implying that all persons are equally situated in terms of their capacities in relation to one another. Rawls refers to the property of equality as the range property as he argues that all persons have the necessary minimum requirements needed to be regarded as equal. In other words, persons may occupy different positions in society that could affect how they actualise their capacity for a sense of justice, or ‘the good’, or their capacity for social cooperation compared to others. However, no person has more or less of a capacity for a sense of justice or ‘the good’ depending on their position within society. Hence, no person has a better or worse innate capacity for social cooperation than others. Rather Rawls argues that by virtue of all persons having the capacity for *both the sense of justice* and for morality, persons regardless of their position in society, have the sufficient characteristics necessary for persons to be viewed and hence treated as equal.²² Therefore, Rawls argues that all persons deserve to be regarded as equal insofar as they equally share the same capacities for the sense of justice and morality.

In light of the above discussion, it is now evident that two dichotomised aspects constitute Rawls’s conception of the person. On the one hand, persons’ capacity for ‘the good’, which describes their non-political aims, is expressed via their non-public reason. In turn these features are representative of citizens as rational persons who have a moral, or non-political identity. On the other hand, persons’ capacity for a sense of justice, which describes their political aims – expressed via their public reason – is a characteristic feature of citizens as reasonable persons insofar as they are seen to have a political identity.

Moreover, it is important to note, for Rawls, that the two distinct aspects of the person – the rational and the reasonable and each respective moral power – are distinct precisely because neither one is derived from nor is dependent on the existence of the other (Rawls 1996, 53). Instead, Rawls views the reasonable and the rational as separate yet complementary aspects of the person, meaning that both the reasonable and the rational, taken together, are two necessary features for fair cooperation to be possible (*ibid.*, 52). Both are necessary, according to Rawls, as the rational without the reasonable would suggest that persons would not be able to recognise fellow persons claims of justice as valid, while the reasonable

²² Leaving asides persons with disabilities. Refer to literature such as Martha Nussbaum’s *Frontiers of Justice: Disability, Nationality, Species Membership* (2006) for a critique of how Rawlsian theory specifically and social contract theory in general cannot count for distributing the same rights and entitlements to disabled persons.

without the rational would suggest that persons would have no personal motivation to enter into social cooperation (ibid.).

As a result of Rawls characterising the person as having two distinct aspects, his conception of persons could be said to portray citizens as embodying a liminal position between the egoistic and altruistic conception of the self in moral philosophy, as the moral motivation of his conception of the person is in a constant state of flux (ibid., 51). This is so since a person's moral motivation is characterised by both self-interest (i.e. the rational) and interest for the other (i.e. the reasonable), yet a person's motivation never exclusively embodies either aspect (ibid.). This can be seen in Rawls's work when he suggests that "reasonable society is neither a society of saints nor a society of the self-centred" (ibid., 54). How these two aspects of the person work in harmony with one another will be demonstrated in the following sections.

Prior to this, it is important to illustrate now, how Rawls's theory of justice embodies the features of the person. To the degree that Rawls characterises persons as free, equal, rational and reasonable, Rawls constructs a conception of justice and its conditions of justification with the values of freedom and equality precisely because the persons to whom the conception of justice applies are characterised as free and equal. In other words, a necessary condition for representing the conception of justice as embodying the values of freedom and equality is to construct the person first and foremost as embodying these values.

2.5 'Justice as Fairness' a Result of a Fair and Equal Agreement

The conception of the persons as free, equal, rational and reasonable is a significant aspect of Rawls's political philosophy as it impacts on the content that persons find acceptable for a theory of justice to exemplify. For instance, Rawls argues that persons in a modern democratic society are perceived to be free due to the fact that persons view themselves and others as being the sole legitimate authority for the ideas of 'the right' and 'the good' that exist within a society. And persons are seen to have the ability to construct and to choose their own conception of 'the good' (i.e. morality) and the conception of 'the right' (i.e. justice). Inasmuch as persons are seen to have the above qualities, they are seen to be equal as they have more or less an equal ability to construct and choose their ideas of 'the good' and 'the right'. In this context then, 'justice as fairness', taking into account Rawls's conception of the person, has to be characterised as a conception of justice that is both fair and equal. Moreover, 'justice as fairness', as a conception of justice for a modern democratic

society, taking into account moral pluralism, has to be characterised as a conception of justice that is morally neutral. A society that endorses one comprehensive doctrine of ‘the good’ would hinder persons’ ability to freely and equally express themselves.

If a theory of justice is not developed with the above characteristics in mind, then that theory of justice will not be representative of the persons within society nor the stable conditions of that society itself, as it would not represent the content that persons find acceptable for a theory of justice to exemplify. In order for a theory of justice to exemplify fairness, equality and account for moral pluralism, the manner in which the content of the theory of justice is arrived at has to be fair and equal and independent of person’s subjective moral values.

Rawls argues that persons who are regarded as free, equal, rational and reasonable are seen to be the legitimate authority for all claims of morality and justice (Rawls 2001, 23). And as a theory of justice is essentially a set of political principles to guide social cooperation then, from the above, a just society has to be characterised as the outcome of a fair and equal agreement in which the content of the agreement (i.e. the conception of justice) gains its legitimate authority from the fact that it is constructed, publicly recognised and collectively agreed upon by persons. To the extent that Rawls argues that a theory of justice must be a result of a fair and equal agreement in which the principles of justice are constructed by persons, Rawls characterises ‘justice as fairness’ as partly a contractarian and partly a constructivist conception of justice (Rawls 1996, 15).

Allow me a few background remarks on constructivism.²³ When I refer to the term constructivism in the context of this dissertation, I mean to imply the broad definition that Carla Bagnoli gives to constructivism in ethics. Constructivism as a moral and political theory holds “that moral values are not discovered, or revealed to us as if by the gods, but rather constructed by human agents for specific purposes. The metaphor of construction implies agents who do the constructing, materials for the construction, a method or procedure for carrying it out” (Bagnoli 2013, 1). According to constructivism in general, moral values

²³ I acknowledge that there are many forms of constructivism, namely, social and mathematical constructivism. When I refer to constructivism in the context of this dissertation, I do not refer to other forms of constructivism outside of moral and political philosophy. Furthermore, I am aware that within moral and political constructivism there are contrasting views of what the term constructivism represents. For instance, Larry Kransnoff’s paper, ‘How Kantian is Constructivism?’ (1999), takes note of the plurality of contrasting definitions of constructivism; however, it is beyond the scope of this dissertation to narrow down or analyse the multiple definitions of constructivism.

and political principles are justified if they are consistent with other accepted moral principles and if they are derived via a constructed procedure.

A constructivist develops principles of justice first by placing certain constraints on their decision-making procedure. In *Political Liberalism*, Rawls affirms this conception of constructivism, when he states, “as to how we find the correct procedure, the constructivist says: By reflection, using our powers of reason” (Rawls 1996, 95). Although Rawls states that the original position is not constructed but laid out, one should not understand by this statement that Rawls is suggesting that his theory is not constructive (Rawls 1989, 513-14). Although he does not refer to this theory as a construction per se, according to O’Neil in ‘Constructivism in Ethics’ (1989, 2), Rawls’s theory is constructive, as the method for arriving at principles of justice is reliant on a constructed procedure that enables the mediation of judgements.

According to Kaufman constructivism in moral and political theory represents principles of either morality or justice to be seen as a result of the collective agreement of free and equal people in an initial situation (Kaufman 2012, 228). Connected to the constructivist idea that moral values and political principles are a result of, and hence dependent on, the procedure in which they were developed, is the moral and political theory of contractarianism.

Contractarianism holds that moral values and political principles gain their legitimacy from the procedure in which persons consent to these values and principles (Cudd, 2012). Insofar as both constructivism and contractarianism – as approaches to the issues of morality and justice – place emphasis on human agents constructing moral and political values or principles via a hypothetical or constructed procedure, and, as both approaches hold that the authority of these values or principles are dependent on the procedure itself; there are fundamental similarities between how constructivist and contractarian traditions are expressed within ‘justice as fairness’.²⁴

²⁴ With that said, one must be aware that I am not attempting to reduce the complexity of constructivism by relating it with contractarianism. I acknowledge that constructivism is a complex theory that involves multiple facets that extend beyond the link I am illustrating. Thus, in a broader investigation of constructivism, proceduralism is only one feature of constructivism. Since proceduralism is only one feature of constructivism, the multiplicity of constructivism cannot be encapsulated in the term contractarianism. Kransnoff (1999, 388) is a scholar that takes note of the complexity of defining constructivism, but he acknowledges that for thinkers such as Rawls constructivism and contractarianism are intrinsically linked. Thus, insofar as theorists such as Rawls are proceduralists, they are constructivists.

Rawls argues that the only way in which citizens of a society can arrive at principles that can be publicly recognised and collectively agreed upon by persons – taking into account moral pluralism – is by developing a political constructivist conception of justice (Rawls 1996, 97). Rawls regards ‘justice as fairness’ as a political constructivist conception of justice and not just a general constructivist conception, as persons in a modern democratic society only collectively and publicly agree on principles of justice to guide public i.e. political life (ibid., 98). It is because there is no possibility for public justification or universal agreement on moral values in such a context, that the scope of the constructivist procedure is political.

As a result of this, Rawls states that ‘justice as fairness’ is only partially a contractarian theory as the content of the initial agreement is restricted to the public political sphere of society (Rawls 1999, 14-15). In other words, the content of the initial agreement, i.e. the set of political principles, is created to apply solely to the basic structure of society itself (Rawls 1996, 257). The implication of this is that ‘justice as fairness’ embodies the contractarian idea that a just society is a “fair system of social cooperation” (ibid.). The basic structure of society, i.e. the major institutions of a society – such as the political constitution, economic principles, social organisation, current legal forms of property – is a result of a fair and equal agreement between members of a society (Rawls 1977, 159 & Rawls 1999, 6). Why and how political principles need to be justified in relation to other accepted moral principles will become clear in Section 2.6.3 of this chapter, in the discussion of reflective equilibrium. Before this it is important to address the necessity for a constructed procedure in a bit more detail.

In order for a society to be represented as a result of a free and equal agreement, the principles of justice that mould the basic structure of society need to be the chosen result of an agreement that is characterised as fair and equal. Rawls argues that a fair and equal agreement has to be a constructed agreement as actual agreements are characterised as unfair and unequal due to the fact that they are plagued with bias (Rawls 1999, 87-88). As such, Rawls argues that all actual agreements are considered to be unfair and unequal due to the subjective nature of the agreement itself, in the sense that the results of all actual agreements are informed by arbitrary factors (ibid.). For instance, the contingent quality of a person’s life, such as their economic status, Rawls regards as arbitrary in that these are the result of what he refers to as a ‘natural lottery’ (ibid.).

These subjective aspects enable some persons, for instance, to have a higher bargaining power than others, or persons may be enticed to sway the agreement in their own favour. Placing justice on an empirical basis, thus necessarily justifies a plurality of moral standards and as such leaves 'the right', i.e. the question of justice, undetermined and held to contingencies. This contingent based reasoning is representative of empirical practical reasoning, i.e. *a posteriori* reasoning, insofar as the justification for actions or principles is reliant on an individual's context. Rawls wishes to avoid the relativism implied by such conflicts by placing justice on a stable foundation (Rawls 1996, 272 & Rawls 1999, 75). For Rawls then, a theory of justice must be a result of an agreement from a constructed procedure that is characterised by certain restrictions on reasoning (Rawls 1999, 122). It is these restrictions that enable the principles of justice to embody fairness and equality, as the principles are seen to be a result of an agreement that is fair and equal (*ibid.*), precisely because persons are able to fairly and equally deliberate about the principles independently of subjective influences or their personal bias (*ibid.*, 453).

Given this, Rawls needs to develop a procedure of justification that can result in an agreement that is fair and equal. In Section 14 of *A Theory of Justice* (1999, 74-77) Rawls discusses 3 forms of procedural justice in order to assess the best way in which to construct a procedure that will enable a fair and equal agreement as to which political principles we should choose to govern the basic structure of society. Hence Rawls contrasts pure procedural justice with perfect and imperfect procedural justice. Briefly, perfect procedural justice is the idea that a fair and equal outcome is a result of an independent standard for justification that is arrived at via a guaranteed procedure (*ibid.*, 74), whereas imperfect procedural justice has no independent standard for justifying an outcome and hence there is no possible procedure that can ensure a specific outcome (*ibid.*, 75). Rawls refers to the example of the division of a cake to illustrate the former kind of procedural justice while he illustrates the latter with reference to a criminal trial.

According to Rawls, it is rare if not impossible, to develop an independent standard of judgement (i.e. perfect procedural justice) against which to judge the principle of justice, especially considering the nature and level of interests involved in developing principles of justice (*ibid.*, 74). In contrast, Rawls argues that in the case of imperfect procedural justice it is impossible to develop a procedure that can lead to a guaranteed outcome and as such, if the procedure itself cannot be determined, then this form of procedural justice cannot be the basis of Rawls's constructed procedure (*ibid.*, 75). Therefore, the manner in which we arrive at fair

and equal agreements, according to Rawls, must be via pure procedural background justice²⁵ as it is the most feasible form of justification for the principles of justice. Pure procedural background justice affirms the claim that a fair procedure will enable a fair outcome provided the procedure itself is followed correctly. In other words, as long as the procedure is characterised with certain features, rules or restrictions and the procedure is followed in line with those requirements, then the outcome itself should embody the conditions of the procedure (ibid.).

This means that a fair and equal agreement is characterised and determined by a fair and equal procedure. As we know from the discussion above, an agreement can only be fair and equal if the content of the agreement is not influenced by the arbitrary contingencies that would normally affect a person's decision. As such, Rawls has to construct the procedure in such a way as to prevent the potential that persons have to sway the outcome of the agreement in their favour, while still advancing the interests of all persons (ibid., 102). Given this, Rawls argues that a fair and equal agreement can only be reached via a constructed procedure which is designed in such a way as to act as a neutral accord between fabricated citizens of society. Let us now turn to how the constructed procedure itself is a hypothetical neutral accord between fabricated citizens.

2.6 The Features of the Constructed Procedure

The initial situation, in contract theory, is the term used to refer to the ideal background circumstances that enable a fair and equal agreement, this initial situation in 'justice as fairness' is referred to as the original position (Rawls 1999, 104). The original position is a hypothetical and non-historical situation, the latter implies that this agreement has not and will not ever take place while the prior implies that there is no actual agreement between persons (Rawls 2001, 160). However, according to Rawls, this does not suggest that the agreement itself has no binding force (ibid., 16-17).²⁶ According to Rawls the outcome of this hypothetical agreement is binding as the procedure models the 'considered convictions' of

²⁵ Rawls throughout his early works, such as in *A Theory of Justice* (1999 73-74) refers to this idea as pure procedural justice, in his later works such as *Justice as Fairness: A Restatement* (2001, 51) he added the word background to solidify the fact that the subject of this constructed procedure is the basic structure of society or the background institutions that determine the background justice of a society.

²⁶ Theorists such as Sandel and Nozick have argued that hypothetical consent has no moral binding force. Refer to pp. 109-113 in *Liberalism and the Limits of Justice* (1998) and to pp. 208-209 in *Anarchy, State and Utopia* (1974) for discussion.

persons of a modern democratic society as to, firstly, what a fair agreement is, and secondly, the constraints persons find suitable to restrict the procedure in order to arrive at a fair and equal agreement (ibid., 17). He thus suggests that the outcome of the agreement is binding as it is what free, equal, rational and reasonable persons would agree to, if they were placed under these circumstances.

Due to the fact that the outcome of the agreement is constructed, the persons doing the construction are in fact fabricated persons insofar as they are not actual persons but rather representative of persons who are characterised as free, equal, rational and reasonable, and as such they are hypothetical persons (Rawls 1999, 104). When reasoning in line with these constraints, anyone can replicate the same rational process of reasoning from the perspective of equally represented free and equal agents (Rawls 2001, 81). Thus, the original position is not an assemblage of all actual living persons within a specific society (Rawls 1999, 120), but rather “characters who have a part in the play of our thought-experiment” (Rawls 2001 83). How these artificial agents are represented with these features will become clear via the discussion of the constraints of reasoning below.

As stated, the original position reflects a constructed rational process of reasoning that is characterised by certain constraints of reasoning. Given that the content of a fair and equal agreement results from a constrained hypothetical procedure, the original position is representative of the idea of pure procedural background justice. In order for the original position to embody the idea of pure procedural background justice, it is necessary for the content of the agreement to be decided on, distinct from the ‘arbitrary contingencies’ of everyday life, as previously mentioned. The way in which this is achieved, according to Rawls, is for the content of the agreement to be agreed to behind a ‘veil of ignorance’ (Rawls 1999, 118). The veil of ignorance is the figurative notion Rawls develops to refer to the constraints of reasoning which characterises the original position (Rawls 2001, 81).

The artificial agents – reasoning in line with the constraints of the veil of ignorance – decide on the content of the agreement (i.e. the theory of justice) – without knowing how the content of the agreement will affect their position within society (Rawls 1999, 119). In other words, they reason distinct from the knowledge of, for instance, their social position, share of resources, abilities, interests, psychological features, rational plans of life and their specific

conception of ‘the good’²⁷ (Rawls 1999, 118). Furthermore, artificial agents are unaware of the features of their society such as their society’s political and social circumstances, their natural resources or their technological assets. Rawls restricts the agents’ information of their broader social context in order to extend the fairness and equality of the agreement amongst generations of a society (Rawls 1996, 273). Thus, in this sense, agents reason about their society from a general perspective, as they only have knowledge of general laws and theories (Rawls 1999, 119).

The fact that agents reason distinct from comprehensive doctrines of ‘the good’ and their historical time period is a feature of a thick (as opposed to a thin) veil of ignorance²⁸ (Rawls 1996, 24). Rawls states that the veil of ignorance is thick as opposed to thin.²⁹ It is thick as opposed to thin, as Rawls constructs the artificial agents within the original position with the absolute minimum amount of necessary information in order to enable them to reach a rational and reasonable agreement (Rawls 1980, 549-550). Hence, the “thickness” and “thinness” of the veil of ignorance is determined by the amount of information it lets through. Note that the veil becomes thinner in the so-called four stage process – Rawls describes in Section 31 of *A Theory of Justice* (1999, 172-176) – where the veil is gradually lifted as the nature and site of decisions change (Rawls 1980, 549).³⁰

Additionally, Rawls models the artificial agents in the original position with the characteristic of equality, by representing the agents as reasoning from a rational perspective of symmetry, i.e. by reasoning in line with general constraints devoid of subjective influence. Thus, the artificial agents in the original position are characterised as equal due to the constraint of the veil of ignorance (Rawls 2001, 20). Moreover, the conditions of the original position itself represents the artificial agents as free, in the sense that no agent is bound to an independent

²⁷ With that said, these artificial agents are aware that they have a comprehensive doctrine of ‘the good’, they are just not aware of its specific content (Rawls 2001, 88).

²⁸ The distinction between a thick and a thin veil of ignorance was not mentioned in the first or second edition of *A Theory of Justice*. Rawls first mentioned it in his article ‘Kantian Constructivism in Moral Theory’ (1980, 549) and made references to it in his later works such as *Political Liberalism* (1996, 24).

²⁹ In Section 3.3.3 of Chapter 3, we return to this feature of a thick veil and its relation to Kantian constructivism.

³⁰ A thin veil of ignorance initially would allow artificial agents access to all information and knowledge and then would remove only the necessary information that would prevent an agent from making an impartial decision. Refer to ‘Kantian Constructivism in Moral Theory’ (1980) pp. 549 for further discussion.

conception of justice but rather they freely choose the conception of justice that they would be willing to act from (Rawls 1985, 235).

The original position is constructed in light of the rational autonomy of persons inasmuch as the agents within the procedure are represented as having the same intellectual and moral powers as actual persons (Rawls 1996, 72). In other words, artificial agents have the same capacity for rational deliberation as actual citizens (*ibid.*, 77). To the extent that the agents choose a conception of justice that they are willing to act from they are representative of persons exercising their political autonomy (*ibid.*). Ethical autonomy requires persons to make rational decisions in line with their comprehensive doctrines of 'the good'. Since Rawls argues that in order to secure a fair and equal agreement, it is necessary to portray agents as reasoning apart from their comprehensive doctrine, agents in the original position are not represented as having ethical autonomy (*ibid.*, 78). The implication of this is that the artificial agents themselves are not portrayed as having full autonomy, as only citizens and not their representatives have the ability to reason in terms of both their political and ethical autonomy (*ibid.*, 77). However, just because the artificial agents themselves are not seen to actively reason in terms of their full autonomy is not to suggest that Rawls constructs the agents without the capacity to have full autonomy. Rawls represents agents as having the capacity for full autonomy, but the structural set up of the original position – i.e. the veil of ignorance – prevents the agents from using their full capacity (*ibid.* 77).

The implication of the role of the veil of ignorance restricting the content that agents reason about, is that it ensures that the artificial agents reasoning from the perspective of the original position at any given time are always informed by the same set of knowledge. The limitations on knowledge created by the veil of ignorance enables a level of objectivity in deciding on the content of the agreement. As a result of this, at any given time from the standpoint of any one person selected at random there will always be a unanimous agreement as to the content of the agreement itself (Rawls 1999, 109 & 121). Therefore, as previously stated, Rawls designs the original position in such a way that the circumstances surrounding the agreement are devoid of subjective influences, hence the principles themselves are a result of an impartial procedure, which necessarily enables the outcome of the agreement to be objective.

Due to this, the chosen theory of justice is seen to be universal in application as it is independent of, but yet is applicable to, all circumstances of social life (*ibid.*, 109 & 119). In this way, Rawls is able to represent his theory of justice and its chosen principles as first-

order principles, meaning that ‘justice as fairness’ and its chosen principles are prior to and hence not dependent for their validity on the empirical circumstances of persons’ life choices. Therefore, in this way Rawls places the ‘the right’, i.e. the theory of justice, on a rational foundation insofar as the justification for ‘the right’ is representative of an *a priori* abstract source of reasoning, i.e. pure practical reasoning, and not *a posteriori*, empirical practical reasoning.

Given the above, the agents reasoning from the perspective of the original position in line with the constraints of the veil of ignorance, come to agree on the content of the agreement by making a choice from a list of the most prevalent conceptions of justice within the current moral and political philosophical tradition of modern democratic society (ibid., 107).³¹ Therefore, the conception of justice that is unanimously agreed to is chosen from a given set of conceptions of justice. In this way the original position acts as a selection device, in the sense that it facilitates the objective choice of a conception of justice that is in line with citizens’ ‘thin theory of the good’, persons’ moral sentiments and ‘considered judgements of justice’ (Rawls 2001, 83). How ‘justice as fairness’ aligns with persons’ ‘thin theory of the good’, persons’ moral sentiments and ‘considered judgements of justice’ will be explained in the following section.

2.7 Justification for ‘Justice as Fairness’

Before I discuss why Rawls argues that the artificial agents in the original position would choose ‘justice as fairness’, it is important to clarify how these artificial agents would agree to choose a certain conception of justice over another. To demonstrate this, it is necessary to illustrate how Rawls proposes that the objectively chosen conception of justice is the one which satisfies citizens’ ‘thin theory of the good’ or ‘goodness as rationality’ and best aligns with persons’ moral sentiments and their ‘considered judgements of justice’ (Rawls 1999, 41-43).

This above statement itself may sound counter-intuitive, as I have stated that Rawls desires to develop a theory of justice that is impartial to the degree that it is chosen independently of all subjective aspects of a person’s life. Yet I will explain in what follows that this statement

³¹ Refer to pp. 107 of *A Theory of Justice* (1999) for a comprehensive list of all conceptions of justice that artificial agents in the original position can choose between.

actually suggests that a theory of justice must embody some subjective aspects. At this point, it is important first to distinguish in what way Rawls's constructed procedure and theory of justice embody moral neutrality. Rawls distinguishes two ways in which neutrality can be understood, namely, neutrality of procedure and neutrality of aim (Rawls 1988, 261).

Neutrality of procedure implies that the justification of the outcome of the procedure itself is neutral in that its justification is independent of all moral values and is an expression of purely neutral values. On the other hand, neutrality of aim implies that the procedure itself is neutral in that it is designed to be a neutral evaluation of values in that it does not favour or advance any values, and this then enables the outcome itself to embody neutrality (ibid.).

Rawls's theory of justice could be said to be neutral in aim in that it does not appeal to any comprehensive doctrines of 'the good' for justification. More specifically insofar as Rawls constructs the procedure of justification as aiming for impartiality, fairness and equality of persons, Rawls characterises the procedure itself as neutral in aim. One could argue that Rawls's constructed procedure embodies aspects of neutrality to the degree that the information the agents are given, as well as the structural set up of the procedure and the values it embodies, could be regarded as neutral insofar as the information and values are the common basis for agreement. In this way common ground for Rawls is synonymous for neutral ground (Rawls 1996, 193). However, with that said, the justification of the chosen conception of justice is not based solely on neutral values, in that the procedure itself is informed by substantive values, such as the idea of the person, 'thin theory of the good', political virtues and general moral sentiments (Rawls 1988, 263). How Rawls enables substantive values to influence the agents reasoning yet not undermine the objectivity of the procedure itself nor the outcome of the procedure will now be illustrated.

2.7.1 The 'Thin Theory of the Good' or 'Goodness as Rationality'

As stated in the previous section, on the one hand, Rawls suggests that the agents reasoning about justice under the constraints of the original position reason from a general good, in the sense that they are aware they have a comprehensive doctrine of 'the good' however they are unaware of its content. On the other hand, Rawls further characterises the agents as reasoning in line with another type of good and in this case, they are aware of its content.

Rawls characterises the agents in the original position with very specific and limited ideas of 'the good', all of which must be political ideas of 'the good' as these ideas must be limited to

the public (political) sphere of society (Rawls 1999, 361). Moreover, as these ideas of ‘the good’ must be general enough to be shared by all persons in society without invoking or conflicting with any fully or partially comprehensive goods featuring in the non-public sphere of society, these ideas of ‘the good’ are the goods of persons as citizens (Rawls 1988, 253 & 259). Rawls characterises persons insofar as they are seen to be citizens as having a ‘thin theory of the good’ and, subsequently, he characterises agents within the original position as rational to the extent that they are influenced by the ‘thin theory of the good’ when choosing a conception of justice. Rawls refers to this ‘thin theory of the good’, that accounts for the primary goods of society which influences the agents’ choice of their conception of justice, as ‘goodness as rationality’³² (ibid., 254).

The ‘thin theory of the good’, or ‘goodness as rationality’, therefore refers to a limited general understanding that all persons of society share as an awareness that they all have their own interests (which is expressed in their appeal to their own comprehensive doctrines of ‘the good’) (Rawls 2001, 141). At the same time, they are aware that there are general requirements that a society needs to fulfil in order for persons to exercise their good. These general requirements Rawls refers to as primary goods that are the necessary circumstances and resources needed for all persons to freely and equally carry out (realise, fulfil, actualise) their comprehensive ideas of ‘the good’ (Rawls 1996, 187).

Rawls develops a list of five essential primary goods. Firstly, all public institutions need to secure and promote the rights and liberties of all citizens, as rights and liberties are necessary conditions for persons to fully exercise their moral powers (Rawls 2001, 58-59). Secondly, freedom of choice and opportunity with regards to one’s profession and association within society enables citizens to freely revise and pursue their chosen ends (Rawls 1988, 257). Thirdly, all citizens require freedom of choice to enter or hold economic and political positions of power and responsibility within public institutions (Rawls 1999, 181). Additionally, all citizens need to have free, fair and equal opportunity to secure and pursue income and wealth, as these are necessary resources for achieving any life ends (Rawls 1999, 366). Lastly, it is necessary that public institutions encourage the self-respect of all persons as citizens in order for them to be able to advance their own ideas of ‘the good’ with self-

³² Rawls, in his later works, collapses the ‘thin theory of the good’ into ‘goodness as rationality’, meaning that he encapsulates the use of ‘thin theory of the good’ into the notion of ‘goodness as rationality’ (Rawls 1988, 254).

confidence (Rawls 2001, 58-59). Furthermore, Rawls in ‘The Priority of the Right and Ideas of the Good’ (1988, 257), extends the list of primary goods to possibly include “leisure time... and the absence of physical pain” (ibid).

Primary goods, Rawls argues in other words, are the necessary political goods that all persons as citizens share, precisely because primary goods are the general political goods that are independent of the content of any comprehensive doctrine of ‘the good’ (Rawls 1999, 361). Given this, one could say that the content of primary goods themselves are objective in the sense that they are the standard prerequisite needed in order for any citizen to carry out their rational life plans. Yet, at the same time, persons can subjectively choose how they wish to make use of their primary goods given their subjective life plans.

Rawls’s claim that it is rational to portray the artificial agents as having a desire for primary goods as these goods are the social goods that are necessary not for particular ends, but for universal ends as all rational agents require them for autonomous existence (Rawls 1980, 526). This enables him to contend that the agents’ choice in the original position is a mutually disinterested choice and not an interested choice, as their being interested in primary goods is to the equal advantage of rational and reasonable persons (Rawls 1996, 180). To the extent that the agents in the original position are not motivated by their own particular inclinations or desires, but rather by their interests as rational agents, they are motivated by the ‘thin theory of the good’ or rather ‘goodness as rationality’ which embodies the pure practical reasoning that is a key feature of the prioritisation of ‘the right’. The implication of primary goods being the general goods which citizens can appeal to within the political sphere of society, is that primary goods act as a point of consensus of ideas of ‘the good’ without any appeal to moral, philosophical or religious values (Rawls 2001, 60). How primary goods act as one of the cornerstones of public justification for a conception of justice which, in its turn, enables the ability for a stable society, will be discussed in Section 2.9 of this chapter.

It is important to mention primary goods now in order to demonstrate that it is necessary, for Rawls, to portray the agents reasoning from the original position as reasoning in terms of ‘goodness as rationality’. Most importantly, it is important to illustrate how agents reasoning with the list of primary goods in mind does not undermine the critical distance or the impartiality of the original position. The primary goods themselves embody a level of objectivity or neutral ground if you wish, to the extent that primary goods are necessary and

hence desired by all persons regardless of their comprehensive conception of ‘the good’.³³

Let us now turn to the other cornerstone of public justification necessary for a conception of justice, namely the underlying moral sentiments of citizens of a constitutional democracy.

2.7.2 A Theory of Justice as a Manifestation of Moral Sentiments

The agents in the original position are not only moved by ‘goodness as rationality’ when choosing a conception of justice, they are also moved to choose a conception of justice that best aligns with their own moral sensibility. How agents are characterised as reasoning with their moral sensibility in mind as a form of objective *a priori* reasoning will now be discussed.

The notion of moral sentiments is the notion Rawls refers to in his earlier works, such as in *A Theory of Justice* (1999, 44), to denote the idea that any conception of justice that actual persons would agree to, has to at some level be informed by their own socially constructed moral ideas. As the artificial agents are representative of actual persons, it implies that at some level, artificial agents need to be characterised as having some aspects of moral reasoning, which will influence their chosen conception of justice. In order to understand why this is the case it is important to demonstrate how, according to Rawls, moral sentiments influence a person’s willingness to act according to any conception of justice.

According to Rawls, moral sentiments are “habitual attitudes” (ibid., 437) that persons experience in everyday life, such as the feelings of shame and guilt, they are subjective in nature as they vary in relation to the morality of each individual (ibid., 423). Societal moral sentiments, general facts of society, citizens’ conception of a rational plan of life and the Aristotelian Principle of the good³⁴, are all aspects that influence the subjective content of the moral sentiments of persons (ibid., 397). Underlying the justification of moral sentiments is

³³ Theorists such as Amartya Sen argue that all citizens do not require the same primary goods regardless of their comprehensive doctrine. Rather, depending on a person’s comprehensive doctrine this will require citizens wanting more or fewer primary goods than others. Refer to the Sen’s ‘Equality of What?’ (1979), ‘Well-Being, Agency and Freedom’ (1985) and ‘Justice: Means versus Freedoms’ (1990) for further discussion.

³⁴ According to Rawls (1999, 364), the “Aristotelian Principle states that, other things [being] equal, human beings enjoy the exercise of their realised capacities (their innate or trained abilities), and that this enjoyment increases the more the capacity is realised, or the greater its complexity”. In other words, the more persons enjoy exercising certain capacities and the more they excel in them, persons will be more motivated to embrace certain ideas of ‘the good’. Most importantly, the Aristotelian Principle is a principle of motivation that accounts for why persons may be swayed to certain rational plans of life over others (ibid., 373).

an acknowledgement of a moral principle which one references in order to demonstrate how one justifies an action or principle as right or wrong (ibid., 421). Rawls references the notion of moral sentiments to demonstrate how one's justification of any conception of justice is dependent on one's preconceived moral judgements (ibid., 104).³⁵

As stated above, moral sentiments have a subjective quality in that they vary from individual to individual, yet at the same time, Rawls states that there are "higher-order moral sentiments which act to bind a community" (ibid., 167), as they are sentiments which it is rational to assume that the vast part of society share (ibid 1999., 167 & 436). To the extent that a society shares in the same general moral sentiments, these sentiments are not seen to be subjective – i.e. contingent on the individual – rather they are seen to be relativistic as they are seen to be contingent on society.

These higher-order moral sentiments, or "broad based virtues" (ibid., 436), are necessary to secure the stability of the basic structure of society as citizens are only willing to act in line with the chosen conception of justice provided that all other citizens likewise acknowledge and act in line with the chosen conception of justice (ibid, 401 & 383-384). Since citizens who share the same moral sentiments will support the same conception of justice, it is rational to want all members of a well-ordered society to share in the same 'broad based moral virtues' (ibid., 436), as this will enable persons to agree to the same conception of justice. Thus, Rawls argues that it is necessary to portray the artificial agents – reasoning from the perspective of the original position – as sharing the same relativistic 'broad based moral virtues' (ibid., 436-7).

The implication of characterising the artificial agents in the original position with 'broad based' moral sentiments is that Rawls demonstrates how the moral sensibility of modern democratic society guides the agent's choice of a conception of justice, as they choose a conception of justice which best characterises their moral sensibility (ibid., 41 & 43). As stated above, on the one hand, it is important that moral virtues play a role in the choosing of the conception of justice as it safeguards the stability of society. On the other hand, allowing the subjective nature of moral virtues – such as contingent norms and general moral facts of

³⁵ Rawls in *A Theory of Justice* (1999) accounts for a persons' ability of moral judgement via his discussion of the three stages of moral development. These three stages of moral development are, morality of authority, morality of association and lastly, morality of principles. Refer to Section 70-72, especially pp. 405-419 in *A Theory of Justice* (1999) for a comprehensive discussion.

society – to influence the agent’s choice of a theory of justice has the possibility to be problematic for Rawls, as it suggests that a theory of justice is chosen from and informed by subjective aspects of society. If this is the case, the theory of justice chosen by the agents in the original position would be subject to the same problem of relativism which Rawls critiques the theorists of classical utilitarianism for.

Rawls is able to avoid the problem of relativism by arguing that the agents in the original position rationally choose a conception of justice in line with an objective evaluation of their subjective moral sentiments and their initial accompanying judgements of justice. As stated above, moral sentiments – which are influenced by general facts of society, citizens’ conception of a rational plan of life, and the Aristotelian Principle of the good – inform the selection of a theory of justice (ibid., 397). Due to this, judgements of justice, in a constitutional democracy, are naturally in conflict with one another due to their subjective nature (Rawls 2001, 30). In order for Rawls to secure the artificial agent’s judgements of justice from all types of distortions – such as, ones made from self-interest, in haste or uncertainty, all of which result from subjective bias – he argues that it is necessary to reflect on judgements of justice under constrained conditions (Rawls 1999, 163).

The constrained conditions of the original position enable agents to have the best ability and opportunity to exercise their sense of justice so that they are able to make all-inclusive judgements of justice (Rawls 2001, 29). Judgements made under these conditions, Rawls refers to as ‘considered judgements (convictions)³⁶ of justice’ (Rawls 1999, 47). Constrained conditions of reasoning enable the objectivity of ‘considered judgements of justice’ as it enables the artificial agents to create consistency between their ‘considered judgements of justice’, so that they may discover a point of convergence of all conflicting ‘considered judgements of justice’ (Rawls 2001, 30). This point of convergence Rawls refers to as a ‘fixed point of our considered judgements of justice’ (Rawls 1999, 181). Furthermore, Rawls refers to this ‘fixed point of our considered judgements of justice’ (ibid.) as freedom of conscience.

³⁶ Rawls through his works, such as in *A Theory of Justice* (1999, 47), refers to judgements of justice as ‘considered judgements of justice’ while in his works, such as *Justice as Fairness: A Restatement* (2001, 29), he refers to them as ‘considered convictions of justice’. I will mainly refer to them as ‘considered judgements of justice’.

Briefly, freedom of conscience is the moral value of equal moral liberty (ibid., 511). This means that all persons in a constitutional democracy acknowledge that they have equal freedom to choose, develop, construct and carry out their own desires, life plans and final ends. Most importantly, persons have the legal right to be (or not to be) involved and the legal obligation to not hinder any person from practising any expression of ‘the good’ they see fit (ibid., 177). Freedom of conscience is a fixed point in that it is the common underlying moral value that all persons share regardless of their appeal to their comprehensive set of moral values. Freedom of conscience is a relative moral value that is given an objective status in Rawls’s scheme of things, as, in his sense, it is universal in application as it embodies *a priori* reasoning.

It is necessary to discover a ‘fixed point where our considered judgements of justice’ overlap as Rawls argues this is the only way citizens of a modern democratic society can agree on a conception of justice. This necessity rests on the fact that citizens of a modern democratic society share no dominant overarching moral value or authority due to moral pluralism which is a stable feature of the circumstances of justice of modern democratic society (ibid., 489). Therefore, discovering a ‘fixed point of our considered judgements of justice’ is a necessary condition for determining a general moral virtue that is common to all ‘considered judgements of justice’ of a society. It is important to determine this point of congruence as a conjectured theory of justice can only be regarded as an acceptable theory of justice, if the theory of justice and its first principles exemplify this common moral virtue. Rawls argues that this is the only way in which a theory of justice – for a modern democratic society characterised by moral pluralism – can embody enough authoritative moral weight for citizens to desire to adopt this theory of justice (ibid., 158). Let us now turn to how Rawls states we arrive at this ‘fixed point of our considered judgements of justice’.

2.7.3 Reflective Equilibrium

Rawls, in one of his early works ‘Outline of a Decision Procedure for Ethics’ (1951, 177), asks:

“... does there exist a reasonable method for validating and invalidating given or proposed moral rules and those decisions made on the basis of them?”.

Although Rawls does not mention the method of ‘reflective equilibrium’ in this article, he does set the foundation for it, in terms of proposing the necessity for and the possibility of such a method as a solution to this question.

Broadly speaking, reflective equilibrium is the term Rawls develops to refer to the method of justification for moral arguments. Rawls uses this method of justification in order to align political principles with what citizens of a constitutional democracy judge to be the acceptable moral values (Rawls 1999, 18). 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 as acceptable moral values to uphold.³⁷

The method for testing how the conjectured theory of justice aligns to a person’s moral sensibility and their ‘considered judgements of justice’ is wide, as opposed to narrow, reflective equilibrium (Rawls 2001, 31). Rawls (ibid.) introduced the distinction between wide versus narrow equilibrium into his later works and as such this distinction was not introduced in *A Theory of Justice* (1999). Wide, or fuller, reflective equilibrium is the method that accounts for the artificial agents’ continual reflection and bringing into alignment their general moral convictions, initial judgements of justice, the proposed theory of justice and its first principles, while also being aware of and reflecting on the moral force of alternative conceptions of justice in order to reach a state of equilibrium between all the above aspects (Rawls 2001, 31).

In contrast, narrow reflective equilibrium is a weaker form of reflection, as agents do not take into account the moral force of alternative conceptions of justice during rational deliberation in this sense (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 has been reached via rational deliberation. Due to this, it is in this state of wide reflective equilibrium that both the general commonly held moral virtue (‘the fixed point of the considered judgements of justice’) and the proposed theory of justice which best manifest this moral virtue, become evident (ibid.).

³⁷ Although Rawls coined the term ‘reflective equilibrium’ and applied this method to the field of political philosophy, this method of justification for inductive and deductive arguments was development prior to him by Nelson Goodman – see *Fact, Fiction, and Forecast* (1955).

From the above explanation it becomes clear what Rawls implies when he states that “justice as fairness is a theory of moral sentiments as manifested by our considered judgements of justice in reflective equilibrium” (Rawls 1999, 104). ‘Justice as fairness’ is the best possible conception of justice that takes into account the fixed point – i.e. freedom of conscience – of persons’ moral sentiments and considered judgments. Note that this does not undermine the priority of ‘the right’ evident in ‘justice as fairness’ as the fixed point of ‘considered judgements of justice’ is arrived at via *a priori* reasoning.

Since reflective equilibrium is the process of mediation between agents within the original position, the procedure of reflective equilibrium itself as well as the outcome (i.e. the fixed point of convergence) is characterised by *a priori* reasoning, as the conditions of the procedure of rational reflection embody consistency and objectivity which enables the possibility for rational agreement. This means that the method of justification is independent of everyday contingency. Even though the content of the deliberation is relative all citizens share it universally. Since, rational agreement becomes possible, as the possibility for disagreement is narrowed down due to the fact that this rational procedure of reflection is marked by impartiality. Rawls refers to this narrowing down of disagreement between citizens regarding what principles they believe are essential for basic institutions of society to uphold as the agreement on necessary constitutional essentials (Rawls 2001, 28).

If artificial agents (as representatives of citizens) need to be able to agree on the constitutional essentials, then it is necessary that they are able to justify to others what they believe is reasonable and rational principles that themselves 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 grounds for public justification is the outcome of the process of reflective equilibrium because citizens agree on a conception of justice that all agents can publicly support, as reflective equilibrium, mentioned above, enables consistency between citizens ‘considered judgements’.

As previously stated, the fixed point of the agents’ ‘considered judgements’ is freedom of conscience. 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 pluralism. 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 values (Rawls 1999, 181). Due to this, freedom of conscience is the universal (insofar as its shared by all persons of a society) moral value that is the basis of public justification for any proposed theory of justice (ibid., 187).

Thus, the significance of reflective equilibrium is 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 value, due to reasonable pluralism. Identifying freedom of conscience as the moral value that all persons would find reasonable, is the best possible result of this impartial³⁸ independent process of reasoning, as according to Rawls the identification of moral truth is not appropriate for a society characterised by moral pluralism. In this sense, Rawls replaces the search for moral truth with the search for what is morally reasonable (Rawls 1996, 129). Given this, before I illustrate how the condition of moral reasonability acts as a demarcation for the development of moral community and consequently moral stability in a Rawlsian society, I must first discuss the contents of principles of justice that citizens would find acceptable to uphold in a modern democratic society.

2.8 The Content of 'Justice as Fairness'

Rawls argues that 'justice as fairness' is the conception of justice that would be hypothetically chosen in the original position, as 'justice as fairness' – in relation to the other given moral and political theories within the original position – best accounts for persons as free, equal, rational and reasonable and the fact of moral pluralism. 'Justice as fairness' best accounts for the conception of the person as its principles (which are explained below) organise society in such a way as to develop the best possible social circumstances in which persons can actualise their freedom and equality, this is achieved by Rawls structuring society in such a way so that social and economic inequalities are as evenly distributed as possible.

Inequalities are fundamental issues for Rawls as they hinder the potential for persons to freely and equally exercise their moral powers and realise their rational plan of life. Rawls regards the basic institutions as fundamental to the question of justice, as they control the allocation of advantages and disadvantages within society, thus these institutions control a person's life ends (Rawls 1999, 6). Rawls aims to develop basic social institutions that are just, in order to

³⁸ It is impartial insofar as Rawls's theory of justice does not rely on a comprehensive doctrine of 'the good' for its justification.

allow persons the best possible life chances without prescribing ultimate outcomes for their own life choices (ibid., 175). Rawls aims to develop basic social institutions that are just, in order to provide all persons with the necessary resources that will enable them to carry out or actualise their ideas of ‘the good’ without prescribing ideas of ‘the good’ (ibid., 175).

Therefore, according to him, a just society should not allow social institutions to distribute advantages based on arbitrary contingencies such as one’s natural endowments, for example talents, abilities and economic status (ibid., 87-88). Distributing resources according to the moral arbitrary features of persons results in an unjust distribution of resources precisely because it advantages some persons with specific arbitrary features over others.

Given this, Rawls does not call for a society that is equal in terms of the distribution of resources; rather he calls for a distribution of resources such that the distribution of resources may be unequal but is to the advantage of all persons (Rawls 1999, 165). Rawls claims (1999, 56) that all rational people would prefer their prospects with these inequalities as opposed to without them, and this makes ‘justice as fairness’ appealing in relation to alternative political conceptions of justice.

Rawls develops the content of ‘justice as fairness’ with the above in mind. He (1982, 5) suggests two principles that would be chosen in the original position. (a) The ‘liberty principle’ that ensures the equality of basic rights and duties to all (one of the 5 essential primary goods) (ibid.). (b) The second principle which consists of two aspects, firstly, that all positions and opportunities are open to all persons under fair and equal conditions. Secondly, the difference principle³⁹ states that inequalities are permissible if and only if they are to the benefit of the least advantaged members in society (ibid.).

Rawls ranks these principles in a lexical order (Rawls 1999, 55), whereby the first principle of equal basic liberties is given priority over the second principle as a whole. Subsequently, the first part of the second principle, which one could call the equality of opportunity principle is given priority over the second part of the second principle (i.e. the difference principle). Therefore, the difference principle – the second part of the second principle – is given the least priority in that only once the first two principles are satisfied then only can society address the inequalities present within society itself. This ensures that under no circumstances can there be an infringement of a person’s liberties, unless it interferes with the

³⁹ The difference principle is also known as the maximum principle or the maximum criterion – see Rawls’s article ‘Some Reasons for a Maximin Criterion’ (1974).

liberties of others. The distribution of resources must be done in line with basic liberties as social and economic benefits can only be distributed so long as they do not hinder basic liberties (ibid., 54).

Rawls in his later works restructures the principles of justice in order to solidify the priority of liberty. In Rawls's early works such as 'Some Reasons for the Maximin Criterion' (1974, 142), the two aspects of the second principle were inverted, the second principle read as follows: Firstly, the difference principle states that inequalities are permissible only if they are to the benefit of the least advantaged members in society and secondly, that all positions and opportunities are open to all under fair and equal conditions (Rawls 1999, 302).

The implication of this prior form of lexical ordering, is that, the priority of liberty is undermined as this ordering of the principles implies that the difference principle needs to be met before the basic liberties and rights associated with the freedom of persons to have equal opportunity to hold positions of power within society, is met. This is problematic, Rawls realised, as social and economic equalities – the function of the difference principle – could only be addressed once the prior two principles of liberty had been satisfied. The change in the lexical ordering solidified the priority of liberties as it reinforced the idea that no amount of social or economic advantages could be traded in exchange for any loss of liberty and as such solidified the necessary features needed in order for citizens to exercise their moral powers without external hindrance (Rawls 2001, 47).

Returning to the content of the first principle that secures all citizens with equal basic liberties, Rawls states that there are two methods in which to arrive at a list of basic liberties. First this can be done via a historical analysis or secondly, it can be done by hypothesising about the liberties that would be necessary for persons to exercise their moral powers (Rawls 1982, 7). Rawls develops a list of what he argues are the basic liberties for a society namely: "Freedom of thought, liberty of conscience, freedom of association, political liberties, freedoms specified by the liberty and integrity of the person and finally, the rights and liberties covered by the rule of law" (Rawls 1996, 291).

With regards to these basic liberties of the first principle, no one liberty itself is given higher priority than another, rather all basic liberties are placed on an equal footing in relation to one another insofar as they all share the same "special status" (ibid., 292). These basic liberties have a "special status" (ibid.), to the degree that they are prioritised in society, meaning that these basic liberties have to be categorically met and upheld, under no circumstances can

there be trade-offs between liberties and social goods or restrictions of basic liberties all together (Rawls 2001, 47). However, Rawls acknowledges the possibility that there may be regulations on some basic liberties. By regulations he means that some basic liberties in terms of their “central range of application” (Rawls 1996, 295) can be limited, but only for the sake of exercising another basic liberty (Rawls 1982, 9).

As stated previously in this chapter, ‘justice as fairness’ is political in scope, meaning that its principles apply to the basic structure of society. Rawls further categorises how these principles are to apply to specific aspects within the basic structure. For instance, the first principle, that of equal basic rights and liberties, which is given the highest priority, specifically applies to the basic structure of society, and as such, Rawls regards these principles as applying to the constitutional essentials of society (Rawls 2001, 46). The second principle, which includes both the condition for equal opportunities and the difference principle, applies to the background institutions within public political society (ibid., 46).

Furthermore, given this, it is important to note that the difference principle is a macro principle, in that it is to be used to regulate main institutions of society. Therefore, under no circumstances is the difference principle supposed to be implemented via micro institutions themselves such as universities, private corporations or religious institutions. According to Rawls, the difference principle as a macro principle will have a trickle-down effect to micro institutions (Rawls 1974, 142). Therefore, the second principle is enacted during the legislative stage when resolving issues of social and economic injustices (Rawls 1999, 174-5). As such, the implementation of the second principles relies on analysing each form of injustice in relation to the contingency of society itself. Given the pluralistic nature of reasoning about social and economic injustices there will be great incidents of disagreements at the legislative stage and when the judiciary carries out what they consider fair judgements, this would happen according to a constitutional convention (ibid., 397-8).⁴⁰

The constitutional convention is the four-stage sequence in which the principles of justice are implemented. The constitutional convention, Rawls argues, will have fewer disagreements as the implementation of constitutional essentials themselves (i.e. fundamental principles of the basic structure of society) do not differ in relation to contingent factors. For instance,

⁴⁰ In this discussion I have alluded to the four-stage sequence Rawls develops to explain how these two principles will be applied and to what aspects of society they will be applied to. I have implicitly mentioned the four stages but for an explicit discussion refer to Section 31, pp. 172-176 of *A Theory of Justice* (1999).

regardless of circumstances, all persons are equally entitled to basic liberties and have equal access to opportunities and as such they are theoretically implemented in a uniform manner (Rawls 2001, 48). Hence, the constitutional essentials themselves are enacted prior to the constitutional convention and insofar as they have been enacted independently of the contingencies of society their application does not depend as heavily on empirical circumstances. In light of this, the implementation of the difference principle may rely on contingent societal aspects, but its justification and its content are independent of such contingency. Before I explain the justification for the difference principle and why Rawls argues citizens would agree to it, allow me to explicate some of its essential features.

The difference principle is Rawls's suggestion for addressing the issue of distributive justice in a liberal constitutional democracy. As stated previously, this principle justifies social and economic inequalities if and only if the inequalities themselves are to the benefit of the worst-off in society (Rawls 1999, 140). The worst-off in society, or the most disadvantaged members in society, or as Rawls states "the least advantaged" (Rawls 1999, 281), are persons that have the least amount of primary goods available to them (Rawls 2001, 58-59). In other words, persons are the least advantaged when they lack or have the least of what Rawls (1999, 258-259) suggests are "...the three main kinds of contingencies..." namely, "...class origins...natural endowments...fortune and luck..." (ibid.). In other words, the worst-off in society are those that have the highest possibility of not fulfilling their life-prospects or their ideas of 'the good' due to them not having adequate access to essential social and economic resources.

Rawls gives the example of unskilled workers as a key example of members of the least advantaged group. An unskilled worker is one of the worst-off members in society as these citizens have the least resources (i.e. primary goods) available to them (Rawls 1999, 158). For instance, an unskilled labourer has a low level of income, does not hold a position of authority, does not have the same freedom of movement as other citizens, as she has fewer opportunities in terms of education, other job prospects etc. available to her than others. Given this, an unskilled labourer would have less self-respect as she has less confidence in her ability to fulfil her life prospects. Although in theory an unskilled labourer may have the same basic rights and liberties as a person who is the best off in society, the worst-off do not have the same ability to exercise their rights and liberties as the best off as they are socially

and economically constrained. From this example, one can see that the worst-off lack, to some degree, all 5 aspects of primary goods.⁴¹

From this example, one can see that even in a society that secures basic rights and liberties for citizens, certain social and economic constraints prevent persons from being able to exercise these basic rights and liberties. Precisely because of this, Rawls acknowledges that it is essential to develop some level of a “social minimum”⁴² (Rawls 1999,140) so as to prevent such large discrepancies of resources between citizens, with the hope of providing all citizens access to the best possible opportunities to carry out their life prospects given their position in society. Rawls constructs the difference principle to meet the criterion of Pareto efficiency to justify what would and would not be acceptable inequalities in society.

The Pareto criterion of efficiency is a principle in economics that Rawls applies to (macro or background) institutions, or more generally the basic structure of society, in order to determine the efficient distribution of resources (Rawls 1999, 135). According to Rawls the Pareto efficiency principle claims that the most efficient distribution of resources for social welfare is when it is impossible to raise the resources of some citizens without lowering the resources of others (ibid.). In order to reach this optimal distribution, institutions should be structured in such a way as to allow for difference in resources (inequalities) between persons (over generations) if and only if these differences (inequalities) improve the life prospects of the worst-off in society (over generations) (ibid.,138 & 163).

Rawls acknowledges that many inequalities, as he says, are “chain-connected” (ibid.,138), meaning that if we lessen the inequalities of the worst-off by raising their life prospects this would increase the life prospects of other disadvantaged groups that are just above the worst-off group. An important point to note, is that even if lessening the inequalities of the worst-off persons does not increase the life prospects of those groups in the “middle positions” (ibid., 140), the distribution, Rawls claims, is still efficient as it is raising the life prospects of the worst-off, and that is the necessary condition that needs to be met (ibid., 140-141).

In essence, Rawls is requesting that “rich people ought to be willing to limit their preference satisfaction sufficiently for the sake of showing respect to poor people to enable the latter to

⁴¹ Rawls in his article ‘Distributive Justice Some Addenda’ (1999) gives the example of an unskilled worker, but I have inferred how the unskilled laborer would be lacking in all 5 primary goods.

⁴² Refer to Section 5 in ‘Distributive Justice’ (1999, 140-144) for an in-depth discussion of how it is possible for a government to come up with a social minimum.

have adequate resources to live lives defined by their society as worthy of human beings.” (Lötter 2010, 159-160).⁴³ Hence the difference principle calls for a level of solidarity between the rich and poor of a society. But what would make both the rich and poor of a society agree to uphold such a principle? It is the justification of the difference principle that we must turn to now.

In deciding if the difference principle is a principle that citizens would want to follow, their representatives must weigh up this principle via their hypothetical thought experiment and its necessary constraints. Rawls argues that under the conditions of the veil of ignorance, from the perspective of the original position, artificial agents would want to uphold the difference principle in order to increase their possible life prospects. Since no agent knows what position they hold in society there is an equal possibility for any agent to be part of the worst-off or the best-off group in society, Rawls argues that agents are “risk-averse” (Rawls 1974, 143) and as such in terms of practicality they would choose the difference principle as a safeguard.

In addition, Rawls claims that the difference principle and the distribution of natural talents and assets are reliant on an argument of mutual benefit (Rawls 1999, 169). Each artificial agent without knowledge of their actual social position, acknowledges that the difference principle advances the interests of all citizens. Granted that the difference principle advances the interests of the worst-off more than the most advantaged in society nonetheless the difference principle works to the advantage of the most advantaged insofar as it justifies greater resources and inequalities for them if and only if it leads to greater resources and inequalities for the least well off (ibid., 170). Therefore, the difference principle does secure and could promote the interests of the most advantaged as long as its necessary condition is always met.

According to Rawls, the artificial agents would not only choose the difference principle for practical reasons as discussed above, but also because of sentimental attachments. By moral sentiment, Rawls implies, that agents have feelings of solidarity or civic friendship for one another (ibid., 167). Or in other words, citizens acknowledge one another as equally having

⁴³ This same argument for solidarity between the rich and poor can be seen in Rawls’s notion of moral desert. In terms of Rawls’s notion of moral desert, he is asking citizens that are gifted in terms of their talents to share the benefits of their talents with those that have not had the ability nor the opportunities to develop their talents. See Section 48 of *A Theory of Justice* (1999) especially pp. 274.

the same inviolable dignity. Insofar as persons or their representatives acknowledge themselves and others as being free, equal, rational and reasonable the agents acknowledge others as having the same moral status as themselves. Since agents acknowledge other agents' claims to justice and claims to 'the good' as on an equal standing as their own claims, they develop a moral sentimental attachment to one another. Given this, the agents would choose a principle of distribution that would allow for all persons to have the best life prospects possible given their circumstances, as this principle would recognise each person's equal inviolable dignity.

Rawls (ibid., 168) states: "If the contracting parties wished to express visibly in the structure of their institutions that they wanted always to regard each other as ends and never as means only, what principle would they acknowledge in the original position?". The artificial agents would choose the difference principle, as the difference principle does not lessen the life prospects of certain persons for the sake of greater life prospects for others (ibid.). Rawls implies that the difference principle is a principle of solidarity to the degree that it upholds the claim that the best-off citizens would want to limit their life prospects for the chances of the worst-off citizens to have higher life prospects (ibid., 167). Or in simpler terms, as stated above, the rich would be willing to forsake having an excess of resources so that there would be more resources available to the poor. Although Rawls does not directly argue that the difference principle is grounded on a principle of solidarity, he does argue that difference principle corresponds to the Kantian moral principle to treat all persons as ends in themselves (ibid., 167).

Given this, Rawls implicitly argues that there must be some type of sentimental attachment or solidarity among all citizens. The difference principle could be said to be grounded on the principle of solidarity insofar as agents choose to equally acknowledge and respect all persons' claims of justice and 'the good'. Whether this basis of solidarity is enough to ground the difference principle is a current point of critique⁴⁴, which will be discussed in Chapter 4. For now, it is important to note the attractiveness of 'justice as fairness' for citizens of a constitutional democracy. Its attractiveness lies, Rawls argues, in the fact that its principles of justice better encapsulate the ideals of a democratic regime – namely liberty, equality and (to a lesser extent) solidarity – more so than other political theories such as utilitarianism,

⁴⁴ Sandel has raised this critique in many of his works such as *Liberalism and the Limits of Justice* (1984), and his article entitled 'The Procedural Republic and the Unencumbered Self' (1984).

perfectionism and intuitionism. This is precisely Rawls's so called "initial aim of justice as fairness" (Rawls 1996, 292).

Rawls achieves this aim by developing each principle of justice to have its own set of functions and its own field of application, there is however an overlap between the functions as each principle does not exist in isolation. To recap, in succinct terms, the principle of basic liberties (i.e. the first principle) corresponds to the ideal of liberty, inasmuch as it secures all citizens the necessary basic rights and freedoms (Rawls 1999, 167). Note that this first principle also embodies equality, as each citizen should have these rights and freedoms equally. This liberty principle applies to the constitutional essentials.

The principle of equal opportunities (i.e. the first part of the second principle) encapsulates the ideal of equality to the degree that it secures all citizens the same equal right to hold any position of occupation (ibid.). Note that this principle also embodies freedom of choice of all citizens. Lastly, the difference principle embodies the ideal of solidarity insofar as it encourages solidarity between all members of society (Rawls 1999, 166). The field of application for both the principle of equal opportunities and the difference principle is the basic background institutions of society (Rawls 2001, 48-49). Hence Rawls develops the content of the principles of justice so that when implemented in unity they all account for how 'justice as fairness' embodies the ideals of a constitutional democracy.

Having addressed the reasons why artificial agents choose 'justice as fairness' and how its principles of justice align with citizens' 'considered convictions of justice' and their moral sentiments; thus having addressed the content of 'the right' and its justification; it is significant to now address how the condition of moral reasonability acts as a demarcation for the development of moral community and consequently moral stability in a Rawlsian society. Or in essence, we now need to consider how 'the right' curtails 'the good'.

2.9 The Stability of 'Justice as Fairness'

2.9.1 The Overlapping Consensus

Rawls introduced 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 values (Rawls 1987, 1). Given that a constitutional society is marked by moral pluralism, disagreement regarding fundamental principles, ideals

and values is an inherent aspect of society as previously illustrated in the discussion of the burdens of judgement earlier on in this chapter.

Rawls acknowledging this, states that the idea of moral truth cannot be a point of consensus as all citizens disagree about which ideas of ‘the good’ should be the foundation of moral truth (Rawls 1996, 129). Due to this, the best type of agreement citizens can hope for is to agree to fundamental principles and values that they consider to be morally reasonable for all citizens to follow. What this implies is that moral reasonability acts as a condition for consensus regarding ideas of ‘the good’ in society (ibid.). This means that citizens choose to uphold principles and values of ‘the right’, and it is ‘the right’ then that limits the bounds of what is acceptable disagreement in a Rawlsian society. Rawls, although he recognises that a constitutional democratic society is marked by moral pluralism, is aware that not all types of comprehensive doctrines of ‘the good’ can flourish in such a society (ibid., 197). Therefore, a Rawlsian society is marked by moral pluralism, but more importantly, it is marked by reasonable pluralism and reasonable disagreement. The condition of reasonability demarcates the idea that the comprehensive doctrines of ‘the good’ that can and do exist in a Rawlsian society exist within the bounds of ‘the right’ or the bounds of what citizens regard as morally reasonable. Thus, Rawls adds reasonability as an important demarcation for ‘the good’ in ‘justice as fairness’.

Given this, Rawls does not claim that ‘justice as fairness’ does allow or encourages all forms of ‘the good’ equally. Rawls specifically claims that certain ideas of ‘the good’ will flourish under ‘justice as fairness’ while others will not (Rawls 1975, 554). Yet this does not undermine the neutrality with which the comprehensive goods are weighted, meaning, Rawls does not unjustly favour or impede certain comprehensive doctrines over others. Rather, 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.

Having discussed how ‘the right’ acts as a shared basis of public justification in society or is the point of consensus of what is morally reasonable, let us now look at how ‘the good’ of each citizen plays a role in justifying ‘the right’. As we know ‘the right’, i.e. the set of principles of justice and political virtues, presupposes no comprehensive doctrine of ‘the good’, is limited in scope as it applies to the basic structure, and the fundamental principles it upholds are drawn from the shared public culture of society (Rawls 2001, 32-33). Due to this

‘the right’ can be affirmed by multiple comprehensive doctrines since ‘the right’ itself is not based on an antecedent truth of any comprehensive doctrine of ‘the good’. Hence, as stated before, ‘the right’, or the theory of justice, becomes the point of congruence of all comprehensive doctrines as it is representative of that which all persons irrespective of their comprehensive doctrines of ‘the good’ find reasonable.

This point of congruence in a ‘well-ordered society’, Rawls refers to as the overlapping consensus (ibid., 32). In other words, an overlapping consensus is achieved when the same conception of justice receives public support from diverse comprehensive doctrines.

Although, as stated above, all citizens affirm the same chosen conception of justice, they affirm ‘the right’ for different reasons that are influenced by their different comprehensive doctrines of ‘the good’ (ibid.). For example, a citizen belonging to the Islamic religion may choose to uphold the same political virtue of toleration or choose to uphold the value of liberty of conscience, as citizens whom prescribe to Atheism, as these values and principles themselves help to secure both citizens’ ability to practice or carry out their comprehensive doctrines of ‘the good’.

In the same light, citizens who subscribe to comprehensive doctrines of ‘the good’ such as religious fundamentalism – whereby for instance they argue for one specific religious doctrine to be the only recognised religious doctrine – will find this kind of comprehensive doctrine of ‘the good’ not to be encouraged and hence not allowed to exist within a Rawlsian society. More than that, citizens that prescribe to religious fundamentalism would not identify with the political principles and values of ‘the right’. Hence not only would a Rawlsian society not allow comprehensive goods like this to exist, citizens that carry out these goods would not be able to publicly uphold ‘the right’ and as such they would not be able to find the same values and principles as reasonable as other citizens that uphold ‘the right’ do. Given this, I argue that these citizens would not want to nor be able to be recognised as members of this type of society. Therefore, religious fundamentalism is an example of an unreasonable comprehensive doctrine as it does not form part of a sphere of reasonable disagreement. It is an irrational or unreasonable comprehensive doctrine because its moral values contradict the values of a Rawlsian (constitutional democratic) society (Rawls 2001, 37).

Considering this, a Rawlsian society could be said to develop a moral community, if we understand by ‘moral community’ to not be grounded on a comprehensive doctrine of ‘the good’ (Rawls 1996, 146 & Rawls 2001 33-34), but rather to be grounded on the fact that

there are specific political principles and values that act as a morally binding force. This is precisely the role of the priority of 'the right' in 'justice as fairness'. It enables citizens to hold diverse comprehensive doctrines while still agreeing on what principles and values they consider to be morally reasonable for their publicly shared life. Although Rawls refers to the two principles of justice and political virtues, such as tolerance and civic friendship, as political; these principles and values embody moral values and virtues that all citizens of a constitutional democratic society can publicly justify (Rawls 1987, 11 & Rawls 2001, 35-36).

Insofar as citizens can agree to uphold certain moral virtues and principles embedded in 'the right', the moral content of 'the right' acts as a moral binding force of a society. In this way, it is possible to suggest, as Rawls does, that a moral community is possible in a Rawlsian society. Rawls develops the concept of an overlapping consensus to illustrate that a moral community that is grounded on 'the right' or independent of comprehensive ideas of 'the good', is the best type of society, that citizens of a modern democratic society can possibly hope for, given the fact of reasonable pluralism and hence acknowledging the impossibility to eradicate reasonable disagreement (Rawls 1996, 144). Widening our sphere of reasonable agreement, while lessening but never eradicating, the sphere of reasonable disagreement is the best we can hope for, given the moral pluralistic nature of modern democratic society. Therefore, a constitutional democratic society according to Rawls, is representative of a 'well-ordered society' when marked by an overlapping consensus as an overlapping consensus secures the stability of society.

2.9.2 Social Union of Social Unions

As previously stated, a 'well-ordered society' is characterised by an overlapping consensus of reasonable comprehensive doctrines and as such, according to Rawls, is considered stable. 'Justice as fairness' can, as Rawls says, "generate its own support" (Rawls 1999, 474), in the sense that 'justice as fairness' encourages citizens to embrace the content of 'the right' (i.e. what is morally reasonable) and at the same time discouraging citizens from going against or undermining 'the right'. Given this, Rawls considers 'justice as fairness' to be a stable conception if it encourages citizens that at first reject it, to later choose to adopt 'justice as fairness' (ibid., 486). Simply, 'justice as fairness' is stable if and only if it fosters citizens' loyalty to the basic institutions and the political principles and values of society (ibid., 479).

Rawls argues that precisely because 'justice as fairness' is stable due to the loyalty citizens have for upholding the basic institutions, an overlapping consensus is not a "mere *modus*

vivendi” (Rawls 1987, 1). Briefly a *modus vivendi*, according to Rawls (ibid., 10), is a political pact in which citizens have a commitment to uphold certain principles, however they have no attachment to these principles themselves. Rather, they uphold these principles because it is to the mutual benefit of both parties (ibid.). Rawls argues that although citizens acknowledge the principles of justice as being mutually beneficial, an ‘overlapping consensus’ is not – is more than – a *modus vivendi*, as the citizens acknowledge to affirm the moral values embedded in ‘the right’ (ibid., 11).

Rawls, although he acknowledges then that the stability of ‘justice as fairness’ rests on citizens upholding common political principles and moral values, he specifically argues that ‘justice as fairness’ is not a comprehensive doctrine of ‘the good’ nor does it require citizens to uphold a specific comprehensive doctrine. Instead, Rawls claims that ‘justice as fairness’ needs to be justified on moral grounds, but these moral grounds are only partially comprehensive (Rawls 1987, 16). To recap, as discussed in the beginning of this chapter, a doctrine is partially comprehensive if it encourages certain moral values but these values themselves do not presuppose antecedent truth claims such as the nature of persons, etc. (Rawls 1996, 13). Therefore, ‘justice as fairness’ leads to a stable society inasmuch as it affirms the universal moral sentiments of a specific constitutional democracy without prescribing a comprehensive moral value system.

As we know by now, no comprehensive doctrine of ‘the good’ can be the source of a moral community for a constitutional democracy, given the condition of moral pluralism. Yet Rawls claims that a moral community is possible in a constitutional democracy as long as all citizens affirm the moral values embedded in the political principles and values of the community (i.e. in ‘the right’). Insofar as citizens do all uphold the same political principles and political values they all publicly acknowledge sharing in a common (political) good (Rawls 2001, 199). It is this common end (i.e. ‘the right’) that all citizens uphold that forms the foundation for social unity within a constitutional democratic society (ibid.).

In this way, I argue that ‘the right’ i.e. ‘justice as fairness’ acts as the highest (non-comprehensive) good, in that it is seen to be the publicly affirmed political virtue of society (Rawls 2001, 199). Added to the fact that ‘the right’ is considered to be the highest good of a well-ordered society, Rawls states that a well-ordered society is characterised by a final end that can only be realised as a consequent of social cooperation (ibid., 198 & 201). The common social good is realised by citizens working together over generations, to develop

democratic institutions that foster and embody the political values and principles of ‘the right’ (ibid., 201).

Given this, the common social good acts as a social unifier for all citizens of a ‘well-ordered society’, resulting in what Rawls refers to as “a social union of social unions” (Rawls 1982, 34). Rawls in his *Tanner Lecture*⁴⁵ explicates the idea of ‘a social union of social unions’ in reference to an example of an orchestra:

“... Consider a group of gifted musicians, all of whom have the same natural talents and who could, therefore, have learned to play equally well every instrument in the orchestra. By long training and practice they have become highly proficient on their adopted instrument, recognizing that human limitations require this; they can never be sufficiently skilled on many instruments, much less play them all at once. Thus, in this special case in which everyone’s natural talents are identical, the group achieves, by a coordination of activities among peers, the same totality of capacities latent in each. But even when these natural musical gifts are not equal and differ from person to person, a similar result can be achieved provided these gifts are suitably complementary and properly coordinated. In each case, persons need one another, since it is only in active cooperation with others that any one’s talents can be realised, and then in large part by the efforts of all. Only in the activities of social union can the individual be complete” (ibid., 35-36).

This example illustrates in essence the role of citizens in a ‘well-ordered society’. Each citizen has the same moral powers; hence they have more or less the same ability to carry out certain ends or goods. At the same time each citizen is aware that no citizen alone can carry out all ends or goods, hence citizens realise that their good can only be realised in cooperation with others. In other words, ‘a well-ordered society’ is a society that is made up of multiple social unions (comprehensive ideas of ‘the good’) that are complementary and as such work together to form the possibility of ‘a social union of social unions’ (ibid., 36).

Rawls in his *Tanner Lecture* refers to ‘a social union of social unions’ as a comprehensive good (ibid., 38). By this, he is not insinuating that ‘justice as fairness’ itself is a comprehensive good in that it affirms one specific comprehensive doctrine of ‘the good’. He specifically argues against this by claiming that ‘justice as fairness’ is a partially comprehensive theory as it prescribes certain moral values and moral principles (Rawls 1996,

⁴⁵ Rawls gave this *Tanner Lecture on Human Values* entitled ‘The Basic Liberties and Their Priority’ at The University of Michigan 10 April 1981.

xviii). Rather Rawls is implying that the role of ‘justice as fairness’ or ‘the right’ can act as a unifying comprehensive good insofar as its purpose is to unify citizens’ individual comprehensive doctrines into a cooperative society (Rawls 1982, 38).

2.10 Conclusion

In light of this, let us recap what Rawls implies when he states that ‘justice as fairness’ prioritises ‘the right’ (Rawls 1996, 173). Firstly, Rawls does not mean to suggest that a theory that prioritises ‘the right’ makes no claims of ‘the good’. This he argues would be impossible as both moral categories of ‘the right’ and ‘the good’ are necessary for any theory of justice or moral philosophy. Rawls, in *Political Liberalism* (ibid.), insists that ‘the right’ and ‘the good’ are complementary. ‘The right’ i.e. ‘justice as fairness’ as the chosen theory of justice and ‘the good’ as the reasonable comprehensive doctrines, are complementary in the following manner: ‘The right’ is determined prior to and independently of ‘the good’, ‘the good’ then is subordinated to and confined within the limits set by ‘the right’ (ibid., 21-22).

This implies that all persons share the same conception of justice that is independent from, yet mediates, the reasonable comprehensive doctrines of ‘the good’ individually chosen within society. Rawls, throughout many of his works, in reference to this priority relation, states that “the right draws the limit and the good shows the point” (Rawls 2000, 231).

Implying that, ‘the right’ establishes the just public conditions in which one can then in the private 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 1999, 394).

This chapter has teased out the above theoretical structure in discussion of the content of and justification for ‘justice as fairness’. To recap, the emphasis Rawls placed on developing a theory of justice that all citizens could uphold independently of their comprehensive doctrines of ‘the good’ lead him to devise a hypothetical procedure of reasoning (the original position) in which to objectively evaluate political theories. Rawls develops the veil of ignorance as a methodological tool to safeguard the impartiality of the procedure in order to create the conditions for a fair, equal, hence essentially just, agreement between artificial agents. It is this impartial or neutral ground of justification that encapsulates the methodological position of the priority of ‘the right’. Rawls constructs the method of justification of the principles of justice without appealing to a comprehensive doctrine of ‘the good’ and as such illustrates that these principles of justice themselves are independent of moral truth claims.

Insofar as Rawls is developing a theory of justice for a specific subject – the basic structure for citizens of a liberal constitutional democracy – the idea of moral truth as being a basis of justification for the theory of justice itself would undermine the freedom of society. And as such, the basis of justification must rather be moral reasonability, meaning that the content of the principles of justice need to be determined by an evaluative procedure, namely reflective equilibrium. Reflective equilibrium enables the content of ‘the right’ to align to the general moral sentiments and ‘considered convictions’ of citizens, hence ensuring that the principles of justice encapsulate the latent moral ideals of all citizens of a constitutional democracy (Rawls 1996, 175). It is these latent moral ideals that form the content of the principles of justice themselves.

In light of this, ‘the right’ and ‘the good’ are complementary in that both justice and morality are essential aspects of any society, but the priority of ‘the right’ insinuates that what can be considered as moral has to derive from what is considered to be just. This is precisely why Rawls argues that not all types of moral life (i.e. comprehensive goods) can be acceptable in ‘justice as fairness’. Only those forms of moral life that are compatible with the principles of justice can exist in a Rawlsian society. Hence, insofar as what is just limits and determines what is moral, a Rawlsian society develops a moral community not founded on a comprehensive doctrine but on the agreement reached regarding what is morally reasonable.

It is this consensus of that which is morally reasonable that Rawls illustrates in his notion of an overlapping consensus. It is the fact that all citizens can agree to affirm ‘the right’ that acts as a moral stabilising feature in a constitutional democracy, to the degree that it enables the possibility for cooperative society that fosters the comprehensive doctrines of all its citizens without prescribing to them an ultimate moral system.

Therefore, Rawls refers to ‘justice as fairness’ as a partially comprehensive doctrine as it prescribes essential moral values (toleration, solidarity, sense of justice etc.) that all citizens must uphold. Yet ‘justice as fairness’ does not prescribe citizens’ personal morality, what the meaning of life is, how they spend their time or what they spend their money on for instance. These features mean that persons have the freedom to decide for themselves what is good. It is this moral freedom evident in the methodological position of the priority of ‘the right’ that Rawls argues is necessary for a constitutional democracy that is characterised by moral pluralism.

It is now pertinent to discuss what historical influences led Rawls to construct his political philosophy with the methodological position of the priority of ‘the right’. The following chapter is a discussion of moral and political theories that Rawls acknowledges have influenced him in developing his conception of justice. In discussing theories such as classical utilitarianism and Kantian deontology, emphasis will be placed on certain aspects of each doctrine to illustrate and juxtapose the two alternative methodological positions, namely the priority of ‘the right’ and the priority of ‘the good’, with the aim to expose the historical tradition of deriving what is just from what is moral or alternatively what is moral from what is just. Moreover, I aim to juxtapose the two alternative methodological positions in political philosophical literature, to better demonstrate the Rawlsian version of ‘the priority of the right’, when compared to older versions.

Chapter 3: The Historical Tradition of the Prioritisation of ‘the Right’ vs ‘the Good’ in Moral and Political Theories

3.1 Introduction

This chapter addresses the theoretical traditions that influenced Rawls in his construction of his theory of justice. In addressing these theoretical influences, I begin this chapter by discussing the tradition of the priority of ‘the good’. Or in other words, I first address the theoretical tradition – prior to contemporary communitarians – that derives a just action from a comprehensive moral system. Such a tradition argues in favour of ‘the good’ being derived prior to and independently of ‘the right’. In discussing the tradition of the priority of ‘the good’, I refer to classical utilitarianism as presented by Jeremy Bentham and John Stuart Mill, as a primary example of such a theory. Once it has been illustrated how classical utilitarianism encapsulates the methodological position of the priority of ‘the good’, I then give an exposition of Rawls’s reservations of this methodological position. In doing so, I refer to issues such as the indeterminacy of justice, the problem of stability and the danger of developing a theory of justice grounded on a singular comprehensive moral doctrine.

Having addressed Rawls's reservations for the priority of 'the good', this chapter illuminates why certain theoretical traditions were appealing to him when constructing 'justice as fairness'. Here I am thinking of traditions such as liberalism, the social contract tradition and the methodological position of the priority of 'the right'. In discussing these traditions and how they are evident in Rawls's own theory of justice, I refer to thinkers such as John Locke, Thomas Hobbes, Jean-Jacques Rousseau and Immanuel Kant. The former three thinkers will be discussed in limited detail in terms of their impact on liberal thought and the social contract as a method of justification of the legitimacy of a political structure.

The major part of this chapter discusses the influence Kant had on Rawls's theory of justice. I demonstrate how Kant (like Locke) influenced Rawls in terms of ascribing to a liberal political theory. More importantly, I refer to Kant's moral theory to expose the links between Rawls's and Kant's theories in terms of the priority of 'the right'. In doing so, I will focus on the structural relation Kant develops between 'the reasonable' and 'the rational', the categorical imperative procedure, and the fact that moral or political principles are constructions of reason, hence are *a priori* in that they can and should be determined independently of contextual circumstances.

By addresses these theoretical relationships my aim, is to show that what Rawls refers to as the priority of 'the right', has a long tradition within philosophy and is an appealing tradition in that it offers the possibility for a stable foundation for theorising about either questions of morality or questions of justice. This highlights the necessity for theorising about justice and morality from a detached perspective. Moreover, my aim in addressing these theoretical relationships is to represent how Rawls develops the tradition of the priority of 'the right' in his own theory 'justice as fairness'. Let us now turn to the methodological position of the priority of 'the good'.

3. 2 Rawls's Criticism of the Prioritisation of 'the Good'

Rawls's aim in developing 'justice as fairness' is to develop a moral and political theory to stand in opposition to and as an alternative for classical utilitarianism, which was the dominant moral and political theory of the 19th and 20th century (Rawls 1999, 20). Rawls desired to develop an alternative to classical utilitarianism as he argued that classical utilitarianism's weakness is that it cannot take into account the main prerequisite of a democratic society, namely, instituting and unconditionally securing the rights and liberties of free and equal persons (ibid., xii).

According to Rawls, classical utilitarianism specifically and teleological theories in general, cannot safeguard the rights and liberties of free and equal persons due to the way in which teleological theories structure the relationship between ‘the right’ and ‘the good’ (Rawls 1999, 21-22). Rawls refers to classical utilitarianism as a quintessential teleological theory, and further he does in limited detail refer to other theories that embody this same teleological structure, such as the perfectionist theories, rational intuitionism and Hume’s utilitarianism (ibid., 22-30).⁴⁶

As previously stated in the introduction of this dissertation, Rawls presents his critique of classical utilitarianism by contrasting the doctrine as presented by the three major utilitarian theorists namely, Jeremy Bentham, John Stuart Mill and Henry Sidgwick against his own contract view, ‘justice as fairness’. This chapter focuses on classical utilitarianism as presented by Bentham and Mill and does not address Sidgwick’s utilitarianism. Insofar as this chapter discusses Bentham’s and Mill’s utilitarianism, this chapter is however not an exposition of these theories themselves. Rather, this chapter refers to the general theoretical structure of classical utilitarianism in order to facilitate the discussion of the criticism of the priority of ‘the good’.

3.2.1 Classical Utilitarianism

According to classical utilitarianism as presented by Bentham and Mill, all persons are naturally inclined to be moved to act by that which brings one pleasure, and which frees one of pain (Bentham 2000, 14 & Mill 2009, 14). Bentham and Mill argue that the promotion of pleasure and freedom from pain are the only properties of actions that are desirable in and of themselves (ibid.). All persons are naturally moved to act either by the inherent pleasures that result from an action itself or are moved to action as a means to the promotion of pleasure and reduction of pain (Bentham 2000, 5). Bentham and Mill argue that, as the natural inclination of persons is to act in a way which promotes pleasure and reduces pain either inherently or indirectly (i.e. as a means to), this ought to be the standard to which persons refer when considering an act to be morally good (ibid., 15-16). Thus, Bentham and Mill develop a normative account of morality from a descriptive account of reality.

⁴⁶ This chapter does not discuss how and why Rawls argues that perfectionist and rational intuitionist theories are teleological and hence embody the methodological structure of the priority of ‘the good’ nor does this chapter address why Rawls regards Hume’s moral doctrine as utilitarian.

This normative standard of action mentioned above Bentham (ibid., 14) calls the principle of utility, which is the foundation of classical utilitarianism as a moral system. Bentham implies, by the principle of utility, that any action is seen to be a morally 'good' action inasmuch as it produces the greatest amount of happiness or pleasure, while at the same time, preventing the greatest amount of unhappiness or pain of the individual concerned (ibid., 15 & Mill 2009,14). Hence, an action is seen to be a morally 'bad' action inasmuch as it produces unhappiness or pain and averts a person from achieving 'the good' while at the same time, limiting the amount of happiness or pleasure of the individual concerned (Bentham 2000, 14-15).

Mill and Bentham, as the two main proponents of classical utilitarianism, uphold the same fundamental theoretical structure of the theory, by this I mean that, they both uphold the same standard of normative action mentioned above. That certain actions are deemed to be more pleasurable than other actions, based solely on the practical implications which follow from them, i.e. actions are morally good or bad in relation to the consequences the actions bring about (Bentham 2000, 61). For example, an action is morally good insofar as it results in a situation in which one experiences more pleasure and less pain than if one did not undertake that act. Due to classical utilitarianism determining normative action to be a morally good or bad action solely by consequences that would result from an action, classical utilitarianism is a consequentialist moral theory.

However, Mill having witnessed Bentham's utilitarianism being criticised, revised certain aspects of the doctrine, such as developing a qualitative distinction between types of pleasure. Although these revisions themselves did not affect the primary theoretical structure of the utilitarian doctrine, but rather these revisions affected the content of the theory. What is important to note, is that Mill's doctrine of utilitarianism develops an argument for moral action being both an inherent property of action itself, as well as being a consequent of an action; the former characteristic being where Bentham's and Mill's doctrines depart.

Although Mill and Bentham differ with regards to the above, their doctrines are fundamentally similar in that they both argue for a monist account of 'the good'. By this is meant that they both argue that the only good an individual should strive towards is the achievement of happiness or pleasure (Bentham 2000, 15 & Mill 2009,14). Rawls (1999, 21-22), regards classical utilitarianism, as proposed by Bentham and Mill, as a teleological

theory⁴⁷ insofar as morality is goal orientated in this version of utilitarianism. This suggests that classical utilitarianism, as a moral theory, structures normative actions with a prescribed end goal or plan in mind, i.e. happiness or pleasure. Classical utilitarianism as a teleological theory and the implications of this is discussed further on in this chapter, however now it is important to address how the doctrine of classical utilitarianism develops the link between moral action and the development of a just society.

Classical utilitarianism perceives society as an artificial constructed grouping, in that the term society is comprised of and hence purely represented by individual persons. Thus, as Bentham views society as purely a collective noun for a group of individuals, he extends the moral principle of utility to society itself (Bentham 2000, 15, 27). In other words, if an individual ought to follow and uphold the moral principle of utility, so to must society. The principle of utility when applied to society is as follows, an action is a morally good or bad action in relation to how the action affects the sum total interests of the individual persons making up a society (Rawls 1996, 25-26). Similarly, Mill refers to the principle of utility as the 'greatest happiness principle' and states that right and wrong action is determined by that which is considered to be morally good or morally bad action (Mill 2009, 14). Therefore, according to both Bentham and Mill, a classical utilitarian society is just, if and only if society is structured in such a way as to lead to the greatest amount of happiness or pleasure, while at the same time diminishing the greatest amount of unhappiness or pain, for the greatest number of individuals within that society (Bentham 2000, 196).

Thus, the principle of utility when extended to the sphere of social justice is concerned with distributing resources, such as economic, political and social goods (i.e. rights, responsibilities, opportunities, and avenues of wealth) according to maximising the welfare of the aggregate of society. In this way, the principle of utility as a moral code for one individual is extended as a moral code for a collective grouping (Rawls 1996, 21& 24). To the degree that all persons in a utilitarian society are situated within a political system that is driven by one clear goal, (i.e. the maximisation of happiness), all persons' desires are collectively weighted in equal relation to one another, in that no persons' desires count more than another's. In this way, a utilitarian society is impartial to the extent that determining 'the right' action is independent of specific goods or desires of individuals within the society, in

⁴⁷ Refer to *Liberalism, Community and Culture* (1989) by W. Kymlicka, especially Chapter 3 where Kymlicka (1989, 23) argues that Rawls's interpretation of utilitarianism being a teleological doctrine is incorrect.

other words a utilitarian society is neutral in terms of promoting some specific individuals' goods or desires over others (Rawls 1996, 23-24 & Mill 2009, 58).

However, it must be noted that classical utilitarianism is not neutral regarding 'the good'. Although classical utilitarianism does not prescribe specific individuals' good, it does prescribe an overarching good (i.e. pleasure and happiness) that all person's ideas of 'the good' must fit within. In this sense Bentham and Mill develop a comprehensive account of 'the good' to the degree that the society is structured with a comprehensive moral value system that all persons must uphold. In other words, classical utilitarianism is a comprehensive doctrine and hence results in a comprehensive society, in that the ultimate good that persons strive for is prescribed and, the prescribed moral action is that which maximises pleasure. The implication of this is that which is considered to be just, i.e. 'right', for a utilitarian is determined by what utilitarianism as a moral theory considers to be good, i.e. an action is good insofar as it generates pleasures and lessens pain. Hence the moral categories of right and wrong are derived from the moral categories of good and bad.

As stated above, ethical theories that derive 'the right' from 'the good' are regarded as theories that prioritise 'the good'. Ethical theories that prioritise 'the good', according to Rawls, are regarded as teleological theories and are characterised as follows: Teleological theories fundamentally differ in terms of how they define 'the good'. However, they are all structured in a parallel fashion; 'the good' (i.e. morality) 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'. In relation to classical utilitarianism, as 'the right' i.e. the issue of justice is of secondary importance to 'the good', Rawls argues that this is problematic as the content of 'the right' can only be justified in relation to 'the good' that it promotes (Rawls 1996, 22).

Mill, for example, in justifying the doctrine of utilitarianism, argues that the foundation of justice is utility (Mill 2009, 107). Mill states that justice denotes the moral rules or individual rights in our society, which, in turn, are founded on the moral sentiments of persons (ibid.). These moral rules or laws protect persons' basic human needs., e.g. laws such as respecting and upholding the rights and liberties of other persons. Mill claims that these laws are beneficial as they aim to instil order in society, enabling greater social progress. Thus, Mill institutes individual rights within a utilitarian society as he argues that these laws will enable a much greater social utility than without them. Given this, Mill is not concerned with

individual rights themselves but rather just as a means for promoting a greater social utility. In this way, Mill's idea of long-term utility is intrinsically tied to the institutions of rights as it is these 'rules' themselves that offer all persons the best possibility of achieving the greatest amount of happiness within a society (ibid., 108). Inasmuch as Mill is concerned with upholding rules that will lead to a greater social utility for society, he is concerned to be a rule consequentialist, meaning that the consequences of rules denote what is just in society. In contrast, Bentham is considered to be an act consequentialist to the degree that he determines what is right or wrong by the consequences of an act.

Although Mill acknowledges that the principle of utility can be affirmed by rights, because the foundation of justice is utility, there can be exceptions, even if rare, whereby disobedience to these moral rules is acceptable (ibid., 112-113). For instance, Mill argues that "to save a life, it may not only be allowable, but a duty, to steal, or take by force, the necessary food or medicine, or to kidnap, and compel to officiate, the only qualified medical practitioner" (ibid., 113). Given this, classical utilitarianism according to Mill cannot, but more importantly should not, safeguard all rights of all persons at all times. This is problematic for Rawls, because in these terms, at any time, if it can be justified that by not upholding the rights and liberties of some persons can lead to a greater total utility within society, then the action to forsake rights and liberties of those persons is justified (Rawls 1996, 24-25).

Thus, as demonstrated above, 'the right' in teleological theories is always held to contingencies (Rawls 1999, 44-45). In other words, 'the right' is determined by the context of a situation and as such justice (i.e. 'the right') in teleological theories is subjective in essence as 'the right' is arrived at via an empirical basis. Due to this, Rawls argues that 'the right', in teleological theories is relativistic in nature. This contingent based reasoning is problematic because it justifies a plurality of just standards and as such places 'the right' on an unstable foundation. Rawls wishes to avoid the relativism implied by such conflicts by placing justice on a stable foundation. In the following section I discuss how the priority of 'the right' enables a stable foundation for the question of justice to the extent that it secures that 'the right' is not left undetermined.

Moreover, the implication of 'the good' being defined independently of 'the right' is, that firstly, it implies that one's ability to judge what can be considered as a good is done by instinctively discerning 'the good' from our common sense understanding of it (Rawls 1999,

21). This implies that ‘the good’ can be decided on separately from one’s ideas and judgments of that which can be considered as a right, thus implying that our value judgements of what is good are a separate class of judgements. As a result of this, one is able to judge whether or not something is good without judging whether or not something is right (ibid.).

Furthermore, the consequence of ‘the right’ being determined by ‘the good’, is that a society is considered to be just (i.e. ‘right’), when the institutions of that society satisfy the commonly held conception of ‘the good’. For example, in the case of classical utilitarianism, ‘the good’ is regarded as the greatest amount of pleasure for the greatest number of persons (Rawls 1999, 20). Thus, a classical utilitarian society would be considered just when the majority of persons experience the greatest amount of pleasure. This implies that all persons share the same conception of ‘the good’ that is independent of, yet mediates, the contents and conditions of realisation of ‘the right’. Hence, what is considered as ‘the good’ for classical utilitarianism specifically and teleological theories in general, is prescribed to individuals. In other words, individuals in a teleological society do not choose their own conception of ‘the good’. As a consequence of this, Rawls argues that classical utilitarianism as a teleological theory develops a comprehensive account of ‘the good’ (Rawls 1985, 248-249).

Classical utilitarianism develops a comprehensive account of ‘the good’, as ‘the good’ which is prescribed to persons is representative of an ideal which influences every aspect of that person’s life (Rawls 1996, 13, 36-35 & 175). Rawls argues that it is problematic to prescribe a person’s good as he assumes the view that a just society for a modern liberal democratic culture is characterised by moral pluralism. Moral pluralism, Rawls argues, prevents persons from being able to unanimously agree to a prescriptive moral order or a fixed understanding of a natural societal order (Rawls 2001, 15 & 84). As discussed in the previous chapter, Rawls states that the only way in which pluralism can be eradicated as a natural feature of a modern liberal democratic culture is by the state oppressively enforcing one comprehensive doctrine on society (ibid., 84).

Therefore, Rawls argues that a comprehensive doctrine cannot be the stable foundation needed for a theory of justice for a modern democratic society. Instead social unity has to have another foundation of justification. The only way to arrive at a stable foundation for justice, according to Rawls, is by developing a justification for principles of social cooperation that does not uphold any comprehensive doctrine. Thus, as discussed in the

previous chapter, a theory of justice rather needs to be able to mediate this plurality of comprehensive doctrines without prescribing or favouring one particular comprehensive doctrine (Rawls 1996, 109, 190 & 226).

Rawls proposes that principles of social cooperation can be agreed to – independently of persons appealing to comprehensive doctrines – by developing a deontological moral theory. A deontological theory is a moral theory whereby ‘the right’ is determined prior to and independently of ‘the good’. By developing a theory with the above structure, Rawls hopes to avoid the relativism implied by deriving ‘the right’ from subjective circumstances and instead hopes to develop a stable foundation for ‘the right’ by deriving it from an objective process of reasoning.

3.3 The Appeal of the Prioritisation of ‘the Right’

Rawls’s primary aim in creating ‘justice as fairness’ is to develop a political philosophy for a liberal democratic society. In order for Rawls to achieve this, ‘justice as fairness’ has to embody the central tenet of liberal theory, namely, that a just liberal society must be able to take into account natural rights and liberties of free and equal persons as first order principles. This means that rights and liberties must be given a prioritised position of importance, in that they have to be instituted and affirmed unconditionally. The implication of this is that under no circumstances can the freedom of some be sacrificed for any good held within that society (Rawls 1996, 12). Thus, liberal theory develops a justification for the absolute respect of individual rights.

The theoretical foundation of justification which liberal theory appeals to has its origins in social contract theory (ibid., 13). Rawls acknowledges the influence of the social contract tradition on his theory of ‘justice as fairness’ in the beginning paragraphs of *A Theory of Justice* (1999, 10), when he states: “My aim is to present a conception of justice which generalises and carries to a higher level of abstraction the familiar theory of the social contract as found, say, in Locke, Rousseau, and Kant.”

Rawls acknowledges these above-mentioned thinkers’ influence on his own theory of justice, ‘justice as fairness’ in terms of the content which Rawls gives to ‘the right’, i.e. the prioritised emphasis on equal basic liberties and secondly in terms of the method of justification of a legitimate social structure. Prior to discussing which specific aspects of

these thinkers' political philosophies influenced Rawls's 'justice as fairness', I will firstly discuss the tradition of liberalism and its connection with social contract tradition.

3.3.1 Liberal Theory and its Relation to the Social Contract Tradition

Social contract theory argues that the justification of political principles can only be derived from the fact that persons would or could consent to these principles themselves (Boucher & Kelly 1994, 5). Thus, according to contractarian thinkers, a political structure gains its legitimacy from the consent of the governed, whereby these individuals arrive at rational agreement regarding the choice of the principles that will govern their society.⁴⁸ It is important to note that this central principle of justification is the fundamental core thesis that all contractarians hold. It is precisely this principle of justification that Rawls appeals to in constructing 'justice as fairness'. Although contractarians share the same necessary features of justification, mentioned below, there is the possibility for striking differences between contractarian theories as the content of each theorist's argument can differ. Their arguments can differ in terms of how the theorists characterise both the person doing the consenting, the situation in which it takes place, as well as the content of the agreement itself (ibid., 15).

Along with the above principle of justification, theorists, such as, Locke, Rousseau, Kant and Rawls all whom subscribe to the social contract tradition, share the following attributes with regards to the theoretical aspects of argumentation. Firstly, the rational agreement between persons take place within a theoretical device of representation, namely, the state of nature, i.e. the initial position (ibid., 43 & 245-246). The state of nature, in modern contractarianism (as in 'justice as fairness') is characterised as an ahistorical situation, in that it does not refer back to the beginning of actual societal formation. Rather, the state of nature is a hypothetical thought experiment used in order to elucidate the intuitive ideals persons hold regarding either questions of justice or morality (ibid., 37). The purpose of the state of nature is to describe the ideal conditions necessary for consent to be legitimate. Locke (like most social contract theorists) characterises the state of nature as a state that is free and equal, precisely because persons are characterised as such. Firstly, persons are free in that their actions are guided by their own choice, and secondly, persons are characterised as equal to the degree that they all share in the same equal right to political authority, in other words all persons are represented as having equal bargaining power (Rawls 2007, 115).

⁴⁸ Although I trace the social contract to Locke, Rousseau and Kant, the idea of consent being a legitimising factor for justice is evident in works as far back as Plato's *Crito*.

Characterising the state of nature as free and equal enables the hypothetical choice to be representative of a choice that persons who regard themselves as free and equal would or could make under these same conditions. Characterising persons as reasoning about the content of that which they will consent to from a position of freedom and equality is necessary to make consent a binding factor, as these features enable consent to be seen to be a universal method of justification, in that all persons share in the same ability to agree (Boucher & Kelly 1994, 38-39).

In this way, the state of nature, as a device of representation, is used not only as a theoretical tool for exposing moral and judicial principles that free and equal persons find both reasonable and rational. Rather, more importantly it is used also as a hypothetical standard of evaluating the political legitimacy of a regime (ibid., 4-5). For instance, according to contractarianism, one can judge whether a political system is legitimate or not based on hypothetically analysing if ideal persons (reasoning apart from their context) under ideal circumstances would or could consent to certain principles and, moreover, if a political structure is such that it embodies these principles then this political structure itself would be considered just and *vice versa*. Due to this view contractarianism develops a procedural justification of a political system (Cudd 2012).

Returning to the link between social contract theory and liberal theory, insofar as both social contract theory and liberal theory appeal to the rational consent of persons as a requirement of justification, liberal theory can rely on social contract theory as a method of justification. With that said, theorists subscribing to the social contract method of justification do not necessarily imply that these same theorists will subscribe to a liberal political theory, thus the social contract tradition is not a necessary condition for liberalism, as it does not necessitate one to subscribe to liberal political theory. On the other hand, the social contract is a sufficient justification for a liberal theory, as having the free and equal ability to consent to the principles which will govern one's life is adequate grounds of justification for both liberal and social contract theory.

Although both Hobbes and Rousseau view the individual as sovereign, neither one subscribes to the tradition of liberal political theory. Liberal political theory upholds the fundamental principle that all persons are inherently free and as such a political institution must at all costs project their freedom (Cudd 2012). In contrast, Hobbes used the social contract method to justify the absolute rule of one man or an assembly of men (Hobbes 1991, 120). Hence for

Hobbes, the social contract is used as a method to justify the transference of the rights of all individuals into the hands of one individual. Thus, Hobbes breaks away from the political liberal tradition in that his theory justifies the coercive limitations of individuals' freedoms. Similarly, Rousseau like Hobbes, develops an illiberal political theory, in that he develops a political society with the primary aim of developing a moral society.⁴⁹ To the degree that Rousseau's political system prescribes a moral ideal, his political theory embodies illiberal aspects, as a liberal political theory is characterised by not prescribing a fixed moral order. In contrast to Hobbes and Rousseau, Locke and Kant's political and moral philosophies are representative of both the social contract tradition and the development of a liberal political system.

Locke's political philosophy is set out in his work, the *Two Treatises of Government* (1660). Locke develops his political philosophy with the aim of critiquing absolute rule as a form of legitimate political power in favour of justifying a constitutional monarchy. In doing so he exposes the conditions that he argues are necessary for the justification of a legitimate political power. These necessary conditions of justification are rooted in the consent of free and equal persons. In other words, Locke (1960, 2:119 & 122) argues that a political structure is legitimate if it is derived from the free and equal consent of those who will be governed by this political structure. Insofar as Locke appeals to consent as being the legitimising factor of a political society, he appeals to the social contract tradition, which upholds this same necessary condition for the justification of a political structure, as mentioned earlier (ibid.).

Furthermore, Locke refers to the content of the agreement that will be the foundation of the political society as natural rights that stem from the laws of nature.⁵⁰ According to Locke, natural laws exist independently of the circumstances of the world, in that laws of nature are not derived from a social or political system. Laws of nature have their origin in an external moral source, which, according to Locke, is God (Locke 1960, 1:3). Locke claims that all persons have in theory the same equal ability to access and acknowledge the laws of nature, as all persons are born equal, in that they are born with the same rational capacities of reason that God gave them (Locke 1960, 2:6-9 & Rawls 2007, 126). Hence, all persons can come to

⁴⁹ See Section VIII in Book IV of *The Social Contract*, where Rousseau although tolerant of religions is intolerant of those who do not subscribe to a higher order or power.

⁵⁰ Laws of nature are normative laws in that they prescribe a code of conduct between persons within a society. They are accessible via human reason alone, but this is not to suggest that laws of nature themselves, are constructions of human reasoning.

a consensus regarding the content of the agreement (i.e. laws of nature and natural rights) that is discoverable by reason alone (Rawls 2007, 107).

The fact that Locke grounds the moral law in an external authority, means that Locke develops a religious theoretical foundation as the source for natural rights. As a result of this Locke, Rawls would argue, develops a comprehensive account of ‘the good’ insofar as the normative laws to govern human interaction are based on a fixed moral order (ibid., 112). Locke develops an account of laws of nature that sets the theoretical foundation for the concept of natural rights to which libertarians still appeal to today. As modern liberal theory disregards the justification of political principles on the basis of an external authority or disregards appealing to a fixed moral order, the content of the agreement itself for a modern liberal society cannot appeal to the same comprehensive ideology that Locke found appealing in constructing his political philosophy.

Rawls, in developing a theory of justice for a modern liberal democratic society, has to account for the fact of moral pluralism. With this in mind, developing a theory of justice founded on a comprehensive idea of ‘the good’ would undermine the freedom persons have to hold diverse and conflicting ideas of ‘the good’. Given this, Rawls although influenced by the social contract tradition in terms of the legitimacy of the state as being a result of the consent of the governed, chooses specifically to depart from Locke and Rosseau in terms of linking justice to a comprehensive conception of ‘the good’. Rawls found aspects of Kant’s social contract doctrine more appealing despite the fact that Kant too relies on a comprehensive conception of ‘the good’. Let us consider why in the next section.

3.3.2 The Influence of Kantian Constructivism

As Rawls wishes to secure the question of justice on a solid foundation, Rawls states that he found aspects of a Kantian constructivist approach to morality appealing in working out his own theory of justice. More specifically, Rawls argues that it is precisely the structural relation of the priority of ‘the right’ within Kantian constructivism that offers a solution to the problem of how we can adopt a universally agreed upon conception of justice for a modern democratic society if there is no basis for societal consensus given the historical fact of moral pluralism.

Rawls argues that the fact of moral pluralism has the ability to hinder the possibility for universal agreement regarding both the question of morality and justice, as a plurality of

moral standards results in conflicting answers to the same moral predicament (Rawls 1996, 25). And as such, the question of justice and the question of morality are left undetermined or held to contingency. Thus, the issue for Rawls becomes how to avoid the relativism implied by such conflict.

Kantian constructivism proposes a solution to this problem, as it provides the theoretical framework that enables the removal of the question of justice from an empirical basis of agreement and as such it provides the possibility of removing the contingent aspects from the decision-making procedure. Developing an *a priori* rational abstract basis of agreement for the principles of justice, secures the possibility of developing a solid foundation for agreement, as it makes securing a level of objectivity possible. It was this rational abstract source of morality that Rawls found attractive within Kantian constructivism, precisely because a rational abstract source of morality as the basis of societal consensus opened the possibility of arriving at societal consensus, even considering the fact of moral pluralism (Rawls 1999, 502-503).

It is necessary to explain how Kant's theory can be both 'constructed' and 'objective' at the same time. Let us consider the 'constructed' nature of Kant's account first. The possibilities for developing a stable foundation of consensus lies in the fact that Kantian constructivism claims that moral objectivity must be seen to be a result of a constructed procedure that embodies the historical contingent point of view of the persons doing the construction. This necessarily implies that the basis of agreement cannot be an *a priori* moral truth that is independent of the persons themselves and their relation to their social world (Rawls 1980, 519). The implication of this is that the basis of agreement has to embody both how persons conceive of themselves and how they conceive of themselves in relation to their social world (*ibid.*). Taking this into account, Kantian constructivism is appealing for Rawls, as the condition of reasonability replacing the condition of moral truth as the basis of agreement is the best possibility for a stable society considering that our social world is marked by the fact of moral pluralism (Rawls 1980, 519 & Rawls 1996, 129).

Now let us consider the 'objective' aspect of Kant's view. Kantian constructivism proposes that we can reach a point of reasonable agreement by developing a procedure in which we can hypothetically deduce what persons would find reasonable for themselves to agree to. This point of reasonability then is the basis of consensus for agreement to a conception of justice (Rawls 1980, 519). In other words, Kantian constructivism seeks to expose the

subjective underlying sentiments of an individual while enabling the individual to critically reflect on these sentiments themselves from a constructed objective view in order to expose what moral principles persons would find both rational and reasonable to universally consent to.

Lastly, let us consider the *a priori* character of Kant's account. Therefore, for Kant, a moral act would be considered just if it is shown to be a product of a moral principle that is a result of pure practical reasoning (Rawls 1999, 500 & 503). Practicing pure practical reasoning enables moral principles to embody impartiality in that the principles are chosen *synthetically a priori*, meaning that the principles have the possibility to be universally agreed to by all possible persons, while being constructed, and in this way, the content of the moral principle itself is independent of all contingent aspects (ibid., 512). Persons, when acting morally, should not be motivated by personal desires. Kant refers to reasoning in terms of desires as heteronomous reasoning, as persons rely on their empirical circumstances to determine their actions, thus *a posteriori* reasoning undermines the ability for a stable foundation of morality, due to the relativism it implies (Kant 2001, 4:415-4:21, 31-37). Instead, as Kant argues that a person's moral motivation to act must be from a direct appeal to a moral principle, this implies persons have a duty to follow a moral principle that has the possibility to be a universal law, i.e. any moral act is seen to be a command.

Furthermore, Kant refers to a moral command as a categorical imperative. A categorical imperative is a moral principle that is governed by pure practical reason, in other words, it embodies an objective evaluation of one's motivations to exercise one's will in a particular way rather than to act in a particular way (Kant 2002 4:421, 37). In this way, Kant develops a deontological justification for moral commands, according to which emphasis is placed on personal maxims of individuals in day-to-day life, whereby individuals accept a moral command as their duty. Thus, the focus of Kant's constructed procedure, i.e. the categorical imperative, is on the ability that individuals have to hypothetically imagine themselves in the position of other persons when deciding if they can adopt a certain moral principle. In other words, persons universalise their moral actions to analyse if their actions can be willed into a universal duty. According to Kant, any moral principle that can be hypothetically rationalised in terms of universal acceptance should be willed (ibid.).

In relation to the above, Rawls's 'justice as fairness' is moulded in the spirit of Kantian autonomy, in that the agents reasoning from the constructed position of the original position

decide on the principles of justice from an impartial perspective. The agents are restricted in terms of the information they know; thus, they agree to the principles of justice independently of any of their contingent circumstances. As the agents do not use means-end reasoning when agreeing to the principles of justice, they are not reasoning in line with the hypothetical imperative or heteronomous principles. Rather, the manner of reasoning in the original position is based on an *a priori* reasoning akin to that underlying the categorical imperative, in the sense that the agents reasoning from both constructed procedures agree to principles that all rational and reasonable persons under the same constraints would agree to.

Furthermore, the agents in the original position are characterised by the same features as the Kantian self. Rawls's constructivism further mirrors Kant's in terms of the moral powers he ascribes to persons and consequently to the agents in the original position. These moral powers enable agents and individuals to reason from both empirical practical reason and pure practical reason. As previously mentioned, in Chapter 2, empirical practical reason enables individuals to develop their own conceptions of 'the good' by using circumstantial/instrumental reasoning (Rawls 1999, 524), while pure practical reasoning is objective *a priori* reasoning that enables individuals to objectively rationalise via the hypothetical procedures of the original position and the categorical imperative (Rawls 1980, 532).

When acting from the original position or the categorical imperative procedure, persons are represented as free as they do not allow contingent circumstances to govern their decision-making procedure when developing moral (for Kant) and political (for Rawls) commands. In other words, because agents do not allow their individual preferences to sway their choices, they are considered both free and equal, as they are impartial. The impartiality of the original position is Kantian in that it is designed with the thickest veil of ignorance possible (*ibid.*, 549). Meaning, that Rawls constructs the artificial agents within the original position with absolutely no information at first, then characterises the agents with the absolute minimum amount of necessary information in order to enable them to reach a rational and reasonable agreement (*ibid.*, 549-550).

As almost all knowledge is excluded from the original position due to the thickest veil of ignorance, Rawls states (*ibid.*, 551-552) that within 'justice as fairness' there can be no independent notion of moral desert. An independent notion of moral desert would necessarily undermine the equality and autonomy of the agents within the procedure, as it would

determine the outcome of the agreement prior to the agreement. Instead, the notion of moral desert within 'justice as fairness' has to be derived from the outcome of the agreement itself and hence its distributive structure is dependent on the first principles (ibid.). Therefore, Rawls argues that insofar as the original position develops a Kantian impartiality, it subsequently embodies a Kantian idea of fairness in that the decision-making procedure mirrors the Kantian idea of freedom and equality of all persons, as there is no *a priori* notion of moral desert.

Moreover, as both Rawls's and Kant's constructivisms develop constructed procedures in which to arrive at or determine moral and political commands from an objective *a priori* process of reasoning, for both thinkers these principles are seen to be a result of human reason alone. This is essential to both Rawls's and Kant's constructivist procedures as they both justify their principles through human reason. Once Rawls has rationally justified his two principles of justice and Kant has rationally justified a moral individual maxim, they both view the principles of justice and the moral individual maxims as acts of obligation which have to be adopted by persons in order for them to be, in the case of Kant, moral individuals or, in the case of Rawls, agents living in a just society (Rawls 1996, 114). As it is an obligation, these chosen principles and maxims are seen as moral (for Kant) and political (for Rawls) commands.

In light of the above, the features of the persons and the conditions of moral reasoning that characterise the constructed procedure are essential aspects within 'justice as fairness' that Rawls adopts from Kantian constructivism. Although both Kant and Rawls agree on the necessity for an objective *a priori* source of reasoning, this is not to suggest that 'justice as fairness' is synonymous with Kantian ethics, as Rawls's 'justice as fairness' fundamentally differs from Kant's ethics with regards to the subject of pure practical reasoning itself (ibid., 104). This difference focused their constructivisms into two asymmetrical directions, yet the essential aspects mentioned above are at the heart of both theories.

Rawls states the necessity of a rational basis, solely, for decisions of justice not for decisions of morality, unlike Kantian constructivism. Hence Rawls refers to his constructivism as being purely political in contrast to Kantian constructivism, which he refers to as moral

constructivism (ibid., 89).⁵¹ This difference in focus between Rawls and Kant results in fundamental differences in terms of the scope of their constructivism's. While Kant develops a hypothetical procedure (i.e. the categorical imperative) in which to evaluate personal maxims from an objective *a priori* source of reasoning, Rawls's hypothetical procedure (i.e. the original position) is used to develop political principles that hypothetical agents can collectively consent to. The use of objective *a priori* reasoning within 'justice as fairness' is restricted to the development of political principles that hypothetical agents can collectively consent to. In other words, Rawlsian constructivism is focused on developing a procedure of construction that embodies the Kantian idea of pure practical reasoning, yet it only applies to the first principles of society.

In both constructed procedures the social contract is embodied as an abstraction of reason, although for Rawls the social contract is embodied in the hypothetical agreements between agents when deciding solely on 'the right'. One essential feature of Rawls's constructivism is the process of reflective equilibrium, which seeks to illuminate the subjective underlying common sentiments of a historical group of persons while critically reflecting on them from a constructed objective view in order to expose what principles of justice persons would find reasonable to consent to (Rawls 1980, 517-518). Alternatively, for Kant, the social contract and this reflective process are not between agents but rather with oneself. Thus, Rawls is primarily focused on developing political commands to guide inter-personal behaviour within society, while Kant is primarily focused on justifying moral commands to guide an individual's behaviour.

Once the principles of justice have been agreed upon as the acceptable public conditions of society, then, Rawls states that individuals of a democratic society in the private sphere can deliberate and decide on their own conception of 'the good'. 'The good' (its contents and conditions of realisation), are chosen in line with one's contingent circumstances, i.e. with one's opportunities, abilities, circumstances and rational plan of life (Rawls 1999, 347). Thus 'the good', for Rawls, is based on an empirical framework. This in turn implies that 'the good' cannot ever be prescribed to persons as long as their multiple conceptions of 'the good' correspond to the fixed standard of 'the right' that is agreed to by all in the public sphere then

⁵¹ Rawls in his earlier works such as *A Theory of Justice* (1999) devoted Section 40 to showing the similarities between the categorical imperative and the original position. However, it was only in Lecture III of *Political Liberalism* (1996) that he developed the distinction between moral and political constructivism.

their good is acceptable (Rawls 1999, 394). What this suggests is that all persons share the same conception of justice that is independent from, yet mediates, the plural conceptions of 'the good' individually chosen within society. Due to this, Rawls (2001, 11) repeatedly states that his theory is not a fully comprehensive doctrine but rather a partially comprehensive doctrine, as his theory allows for persons to deliberate and decide for themselves what it means to be a moral individual (see Chapter 2 again for this discussion in detail).

The fact that 'justice is fairness' is not comprehensive, is connected to Rawls's desire to take into account the moral plurality associated with a democratic society. As we know by now, Rawls argues that a theory of justice, for a democratic society, should account for a plural society that has multiple conceptions of 'the good' (Rawls 1988, 267). Any moral or political theory that prescribes one ultimate ideal of 'the good', cannot account for diverse ends whereby all conceptions of 'the good' are equally valued. Thus, for Rawls, a theory of justice should not depend on a comprehensive doctrine of 'the good' for its justification.

Kant does precisely that; he grounds the conditions of a just society on a comprehensive account of 'the good'. The hypothetical-ness of the universalizability of the categorical imperative is used to determine and hence prescribe both the person's conception of 'the right' (justice) and 'the good' (morality). Thus, Kant's theory is a comprehensive doctrine; in that it sets a universal standard for morality. While Kant gives priority to 'the good' (the question of morality), once Kant has established what it means to be a moral individual, he then introduces the Kingdom of Ends which is his solution to the question of justice. Thus, for Rawls 'the right' (the question of justice) must be established prior to and independently of 'the good' (questions of morality) and in this way 'the good' (questions of morality) must be dependent on and subordinated to the issue of justice ('the right'). While for Kant, on the other hand, we should only address the issue of justice once the question of morality has been addressed.

Even though Kant is primarily concerned with the question of morality while Rawls is concerned with the question of justice, the priority of 'the right' is evident in how both thinkers justify their moral (for Kant) and political (for Rawls) principles. Both Rawls and Kant appeal to an impartial or objective method for deriving their moral and political principles. It is this methodological approach to questions of morality and justice that is synonymous with the priority of 'the right', which Rawls adopts from Kantian ethics and is the core structural feature of 'justice as fairness'.

Within Kantian ethics, what Rawls refers to as ‘the right’ and ‘the good’ in his works, Kant refers to as the Reasonable and the Rational. For Kant the Reasonable characterises the necessary constraints of the agreement, whereas the Rational is seen to be decisions regarding the ends persons can pursue (Rawls 1980, 528-529). The Reasonable is characterised by the use of pure practical reasoning, while the Rational is characterised by empirical practical reasoning (ibid., 532). The content of the Reasonable (‘the right’) for Rawls is only applicative to the issue of justice, in other words its subject is only the two principles of justice, whereas for Kant the content of Reasonable is both the issue of morality and justice, in other words, its subject is both individual moral maxims and the Kingdom of Ends, as discussed above.

The relation between the two is as follows. The Reasonable is established prior to, thus independently of the Rational. Due to this, the content of the Rational is determined by and hence confined categorically by the limits set by the Reasonable (ibid., 530). Thus, the Rational cannot exist unrestricted for Kant, nor for Rawls. For Kant, the ‘realised realm of ends’, and for Rawls, the overlapping consensus of reasonable moral ideas of ‘the good’, cannot permit all ways of life (Rawls 1999, 509). Therefore, the Reasonable is responsible for the maximisation of the Rational within boundaries of pure practical reason (Rawls 1999, 21-22). The fact that the Reasonable is prioritised over, and hence the Rational is subordinated to it, is the characteristic feature of the unity of practical reasoning within Kantian constructivism that Rawls adopts within ‘justice as fairness’. It is this prioritisation of the Reasonable (‘the right’) over the Rational (‘the good’) that is the distinctive deontological structure of both Rawls’s and Kant’s constructivisms.

Due to this priority relation, deontological theories do not develop a comprehensive account of ‘the good’ in the same way that teleological theories do (Rawls 1988, 253). Deontological theories are able to avoid the relativism implied by the structural relation of prioritising ‘the good’ over ‘the right’, as they appeal to an objective methodological justification for questions of morality, justice, or both. The justification for justice or morality is not influenced by empirical circumstances, which suggests that the justification is objective insofar as it is independent of conditional aspects. Hence, the priority of ‘the right’ is appealing to Rawls, as placing ‘the right’ on an overarching objective foundation enables ‘justice as fairness’ to embody the assumption that liberal democratic society is pluralistic at its core.

By Rawls developing 'justice as fairness' from the methodological position of the priority of 'the right', he is able to develop 'justice as fairness' independently of philosophical, religious and moral doctrines while still categorically affirming the basic rights and liberties of all citizens. Due to this Rawls's theory of justice, 'justice as fairness', is able to safeguard rights and liberties of free and equal persons in every circumstance, something which he argues a teleological theory such as classical utilitarianism cannot protect. Thus this, for Rawls, is the primary appeal of the prioritisation of 'the right' and the drawback of theories that prioritise 'the good'.

3.4 Conclusion

This chapter specifically discusses and contrasts classical utilitarianism and the social contract tradition and in doing so juxtaposes the structural features of teleological and deontological theories, with the aim to point out Rawls's criticism of theories that prioritise 'the good', i.e. teleological theories. Rawls criticises the priority of 'the good', for relativising the principles of justice. In other words, justice is held to contingency insofar as it is dependent on a particular moral theory. Given that moral pluralism is a stable condition of a just democratic society, developing a theory of justice from the methodological priority of 'the good' would necessitate all citizens adopting the same comprehensive account of 'the good'.

Rawls therefore finds the social contract tradition attractive, but more significantly, the priority of 'the right' evident in Kant's deontological approach to morality. As became evident in this chapter however, Rawls and Kant are driven by a different focus, Rawls is primarily concerned with the question of justice while Kant is focused on first developing a moral theory that would then be the basis of a just society. Even though their aims are vastly different, this does not undermine the fact that Rawls inherits the methodological process of justification from Kant, namely, the priority of 'the right'. Rawls found the priority of 'the right' evident in Kant's moral philosophy appealing as it ensured the stability of justice. The priority of 'the right' ensures the stability of justice insofar as the principles of justice are justified by an impartial procedure of reasoning. As such, this procedure safeguards the principles of justice from being justified by and hence dependent on contingent aspects of society. Hence, the central characteristic of the priority of 'the right' that Rawls found appealing, is the objective method of justification, as this firstly, enables 'justice as fairness' to categorically respect and affirm the fundamental liberties of a constitutional democratic

society. Secondly, this impartial or neutral method of justification enables Rawls to construct the principles of justice that would be universally agreed to by all citizens of a particular democratic society without appealing to one comprehensive doctrine of ‘the good’ as a form of justification.

Hence, Rawls found the priority of ‘the right’ appealing because of the possibility of developing principles from an unbiased abstract procedure. Many thinkers have critiqued both the possibility of, and desire for, justifying moral or political principles from an objective, impartial, detached or abstracted view. It is this critique associated with the priority of ‘the right’ that we now turn to in the next chapter.

Chapter 4: Communitarian Critiques & a Rawlsian Response

4.1 Introduction

Having discussed how the prioritisation of ‘the right’ is evident within Rawls’s ‘justice as fairness’ in Chapter 2, as well as having explicated the tradition of the priority of ‘the right’ and its Kantian origins in Chapter 3, it has become evident how the priority of ‘the right’ is associated with liberal theory in general, and that Rawls’s ‘justice as fairness’ is the latest political theory to fall into this tradition. This chapter focuses on explicating the major critiques that have come to bear on liberal theory in general, but more specifically on Rawls’s liberalism and the methodological approach of the priority of ‘the right’.

This chapter illustrates and discusses core communitarian critiques⁵² presented by Alasdair MacIntyre, Michael Sandel, Charles Taylor and Michael Walzer. As stated in Chapter 1, the critiques levelled by these four theorists have been grouped together under an umbrella term, namely communitarianism, due to the fact that they all uphold a common thesis. This thesis states that the priority of ‘the right’ as a method of justification is an incorrect method for justifying moral and political theories or principles and that the view of the self as a rational abstract entity misconstrues the essence of what it means to be human and humans’ relation to the world. As such, these theorists have been labelled communitarian by the broader philosophical community, in that they all share in the critique of justifying moral and political principles from a detached, objective, impartial or abstract view.

In light of their common thesis, this chapter first addresses the issue these above-mentioned thinkers have with the liberal view of the self as a rational self. For instance, Sandel argues that the Rawlsian rational autonomous self is a misconception of the self (*ibid.*). Sandel claims that the Rawlsian self and its liberating essence disregards its attachments to the societal world (Sandel 1984, 86). It is this lack of acknowledgement of the self as constituted by the historicity of the world that is problematic for Sandel. On the other hand, Taylor (1985, 187) argues that the atomistic human subject, as the foundational premise of liberalism, is misrepresentative of the human subject and its condition. As such, Taylor (1989, 27) argues that the self is fundamentally intertwined with the ontology of the world.

Secondly, this chapter addresses the methodological issue of justifying moral and political principles independently of the circumstances to which they subscribe. Sandel argues that it is the problematic view of the self as unencumbered by the world that has led to the degeneration of communal ties evident within society today (Sandel 1984, 93-94). In turn, Walzer (1983, 3-4) argues that the principles that manage the distribution of goods within society should not be based on an abstracted methodology. This is problematic, according to Walzer, as goods – the content and distribution of them – are a result of, and hence gain their meaning from, the context in which they apply to (*ibid.*). Hence, to try and understand the goods themselves via a universal system of distribution that is independent of the context in which they apply, is to misrepresent the inherent plurality of goods.

⁵² Refer to ‘Communitarian Critics of Liberalism’ by A. Gutmann (1985) for an overview of the liberal communitarian debate.

On the other hand, Taylor argues that Rawls's theory of justice, insofar as it is a liberal theory, is not as neutral as it appears; therefore, resulting in the failure of the priority of 'the right' (1985, 207). MacIntyre (2007, 19) argues that the decline of moral culture evident in society today is a direct result of the moral relativism perpetuated by the priority of 'the right' in liberal theory. Lastly, this chapter addresses the extent to which these communitarian critiques hold against Rawls's 'justice as fairness'. Prior to discussing these communitarian critiques, it would be pertinent to recap the priority of 'the right' and the view of the self that it presupposes.

4.2 The Liberal View of the Self

As already discussed in the previous two chapters, the priority of 'the right' encapsulates the view that a society is considered just only if a society is structured in such a way as to be neutral in terms of the conceptions of 'the good' which it prescribes. In other words, a just society is one which is developed independently of any presuppositions of the good life. As such, 'the right' is the sole unifying feature of such a society as 'the right' develops the frameworks within which individuals in society can independently decide their own conception of 'the good'. Due to 'the right' being prior to and independent of the moral category of 'the good', the question of justice for Rawls is given a prioritised position of importance insofar as the content of 'the right' and all claims of justice that stem from it, take precedence over any fulfilment of a conception of 'the good'.

The fact that a society can be established in such a way as to prioritise the virtue of justice first and foremost necessarily implies some assumptions about the kind of self that is able to live within such a society. This view of the self that is associated with the priority of 'the right' both in liberalism in general, as well as in Rawls's liberalism, has Kantian origins. The liberal self, as discussed in the previous two chapters⁵³, is premised on the idea that personhood consists first and foremost in the capacity that persons have to exercise autonomous action (Rawls 1980, 520-521). It is this capacity itself that is the essential source of personhood for liberals. This is evident in the priority of 'the right', as what matters most is not the actions or decisions we choose to undertake, but rather the capacity persons have to exercise their autonomy when undertaking certain actions and making certain decisions.

⁵³ In Chapter 1, the Rawlsian view of the person was explicated, while in Chapter 2 the relationship between the Rawlsian self and the Kantian self was demonstrated.

Hence, the capacity of autonomous choice is prior to and independent of any choice of action that one undertakes, and as such, in such a society, persons are viewed purely as rational autonomous individuals that determine their own ends. The implication of embedding personhood solely in autonomous rationality is that the self is viewed as ontologically prior to, and independent of, its preferences, desires, social, economic and political choices, for instance (ibid., 559). As a result, liberalists view the self in an *a priori* light to the extent that the liberal self's moral worth is founded on abstract rational autonomy. By abstract rational autonomy, I mean to imply the idea that a person's moral worth is independent of the empirical circumstances of the world. It is this abstracted view of the liberal self, evident in Rawls's 'justice as fairness', that Sandel, MacIntyre, Taylor and Walzer critique.

4.3 Contesting the Presuppositions of the Liberal Self

4.3.1 Sandel and 'the Unencumbered Self'

Sandel (1982, 19) argues that the priority of 'the right' over 'the good' is an incoherent way to structure these moral categories, as this priority is founded on a specific view of the self which he argues misrepresents the essence of personhood. This view of the self as independent of the ontology of the world, mentioned in the previous section, Sandel (1984, 83), refers to as the 'unencumbered self'. Sandel maintains, that by viewing the self as having moral worth purely by the ability for it to have the capacity for autonomous choice, implies that the self and the context in which it exists are disconnected to a degree. By 'disconnected' I mean to suggest that Sandel argues the self is separated from its empirical context, as there is a gap between who the self is and what qualities the self has (Sandel 1982, 19 & Sandel 1984, 86). As the moral worth of the self is determined prior to and independent of its desires, preferences, social, economic and political contexts, these characteristics do not determine who the self is, as these aspects do not determine the self's moral worth (Sandel 1982, 22).

The implication of this, Sandel (1984, 86) argues, is the problematic fact that the essence of the self can never be determined by a good which it chooses. In other words, the 'unencumbered self' is a self that can never be constituted by the ends which it chooses, to the point that where a loss of any end would put into question the kind of person that one is. The implication of this is that Sandel claims that the Rawlsian self cannot account for the idea of intersubjectivity (ibid.). This is the case because the self can never be caught between competing identities, as the essence of the self is determined prior to its ends (Sandel 1982, 65-66).

In this way, the self is purely an orchestrator of ends but can never be possessed by the ends that it orchestrates (Sandel 1984, 86). Thus, the ‘unencumbered self’ exists with others in a community on purely voluntarist terms. What this suggests, is that the ‘unencumbered self’s connection with others is based purely on choice. In other words, the ‘unencumbered self’ chooses its own moral ties; it can never be bound by moral ties prior to choice. In this way, just as ‘the right’ is prior to ‘the good’, so too the self and its capacity for choice is prior to its voluntary moral ties (ibid., 87). Thus, the liberal self can be bound by no form of obligations other than those which the self chooses to subscribe to.

This view of the self as unencumbered by the contents of the world, is problematic for Sandel (1982, 21), as he argues, as suggested earlier, that this view of the self misrepresents the self’s relation to the world and its own attachments. Sandel (1984, 86-87) claims that the rational, autonomous liberal self lacks the moral character that is a necessary and a constitutive element of the self. By this, I argue that Sandel calls for the acknowledgement of the embeddedness of the self within the ontology of the world. This is the case as he argues that the self is not free to the extent that the self can move between and among attachments, obligating itself to only those that it picks and chooses for itself (Sandel 1982, 20).

Instead, Sandel (ibid., 22) argues that the freedom of the self to choose the obligations which it wishes to be entangled by, is guided by its being within the world. It is the circumstances in which it finds itself that influences its aspirations and obligations, as it is its context that sways it towards some aspirations and obligations as opposed to others. Precisely because of this, Sandel states that: “For to have character is to know that I move in a history I neither summon nor command” (Sandel 1984, 90). In other words, my aspirations and obligations are those which are largely determined by external factors rather than by my own choice. Thus, Sandel places great emphasis on this historicity of the self as the main source of shaping the identity of the self, as it shapes the moral worth of the self.

Given the above, one can see how Sandel attacks the liberal Rawlsian view of the self as the “sole authenticating source of valid moral claims” (Rawls 2001, 23). Sandel breaks this view down by arguing that the self’s identity is constituted by the ontology of the world. Because of this, Sandel (1982, 21) claims that the Rawlsian liberated self does not adequately represent the kind of self that the human being is, as Rawls overemphasises the capacity the self has for rational autonomous choice, resulting in the underestimation of the influence social, political and economic institutions have on determining the identity of the self.

Thus, according to Sandel (ibid., 19-23), a theory that priorities ‘the right’, such as ‘justice as fairness’, is problematic as it presupposes a self, detached from its surroundings, insofar as the self is seen to have attributes and moral ties but is not defined by them, and thus the essence of the self is seen to be prior to and independent of the context in which it finds itself in. Michael Walzer, much like Sandel, critiques Rawls’s theory of justice for developing an abstracted self.

4.3.2 Walzer and the ‘Abstracted Self’

For Walzer, much like for Sandel, the self already exists in relation to its social and historical context and as such it is this context that informs the kind of person one is as well as the kind of goods one desires. Walzer in *Spheres of Justice: A Defence of Pluralism and Equality* (1983), quotes William James: “the line between what is me and mine is very hard to draw” (ibid., 8). Walzer (ibid., 6-8) claims that trying to think of an individual that exists independently of any good is difficult if not impossible as he argues that who a person is, is informed by the goods which they possess.

Although Walzer does not directly critique Rawls for developing an abstract view of the self, but rather critiques him for his abstract methodology, here one can see a great similarity between Sandel and Walzer. They both have an issue with Rawls for theorising the self independently of the ontology of the world. They both argue that it is the ontology of the world that plays the fundamental part in constituting the self.

In *Thick and Thin: Moral Argumentation at Home and Abroad* (1994), Walzer elaborates his view of the self, which he refers to as the ‘divided self’ (ibid., 84). He refers to this self as divided, as he acknowledges that the self has many different ways in which it identifies itself, for instance, via interests, moral values, professions, etc, hence the self is constituted by divergent roles within society (ibid., 85). Walzer develops a view of the self that is primarily constituted by its facticity, thus, just as he argues that society is constituted by pluralism, so too is the self (ibid., 86).

Walzer (ibid., 98-104) does claim that the self has the ability to be self-critical, however he does not view this ability in the same light Rawls does. For instance, Rawls (1980, 520-521) argues that it is possible to conceptualise of a rational self, devoid of its particulars, and it is this objective essence of the self, removed from its particulars, that Walzer does not buy into. Walzer (1994, 93-98) argues that self-criticism cannot be achieved via this detached objective

method which Rawls argues for. Instead, he argues that the self becomes critically self-aware within the particulars of the world (ibid., 101-104).

The self, according to Walzer (ibid., 89), can reflect on certain features of itself at certain times, and as such develops a critical awareness of itself. But Walzer (ibid., 98) makes clear that this ability of self-criticism does not presuppose some linear or hierarchical relationship between the self and its inner 'I'. Instead, he proposes a relationship that he regards as "a thickly populated circle with me in the centre surrounded by my self-critics who stand at different temporal and spatial removes" (ibid., 98). Hence, just as Walzer argues that when choosing a methodology (explained in the subsequent section), we should move from a 'thick' to a 'thin' account of morality, so too, the self, he argues, is primarily regarded as a 'thick' self that becomes attentive to fleeting moments of self-critical 'thinness' (ibid., 98-99). Charles Taylor, whose critique of the Rawlsian self is the next point of discussion, critiques Rawls for viewing the self independently of its historical and social situatedness too.

4.3.3 Taylor and the 'Neutral Self'

Taylor's critique of Rawls is directed at the liberal tradition. Only insofar as Rawls's 'justice as fairness' is situated within this tradition does Taylor's critique apply to Rawls's theory of justice. Taylor is cautious of certain aspects of the liberal tradition, especially, what he refers to as, the 'atomism' present in social contract doctrines specifically and liberal theories in general (Taylor 1985, 187). Taylor's critique of 'political atomism' (ibid.), much like Sandel's critique of the 'unencumbered self' (Sandel 1984, 83), challenges the liberal view of the self. Taylor is critical of the liberal argument that the self is prior to and independent of the context in which it finds itself, but yet, has the ability to determine the world around itself. Instead, Taylor (1989, 27) insists that the self's identity is determined post its association to the world and as such, the self's identity is determined by the context in which it finds itself.

Taylor, in *Sources of the Self: The Making of the Modern Identity* (1989, 27), explicates the self as bound by the ontology of the world. Within this work, he justifies his claim that it is impossible to conceptualise personhood outside of the moral horizon as Taylor (ibid.) views the self as existing within 'moral space'. Moral space for Taylor is made up of frameworks consisting of both implicit and explicit contextual moral judgments which mark our relation to the world around us (ibid., 26). In other words, our moral ideas are informed by the wider

moral climate in which we find ourselves. For instance, our particular views of dignity, achievements or obligations are framed by the broader moral milieu (ibid.).

For Taylor, the identity of the self is attached to that which is important to the self. For instance, one's commitment as a member of a religion or a member of a certain nationality helps to define who one is. It is these moral frameworks that provide the person with the ontological orientation to determine how they judge their own actions, objects, feelings, etc., as good, or of value (ibid., 27). Thus, Taylor argues that the constitutive element of personhood is the ontological horizon which is comprised of one's moral commitments, as 'who I am' is greatly influenced by 'where I stand' (ibid.).

Moreover, insofar as the self's identity is informed by the moral space in which it finds itself, it is informed by the language which it uses to interpret and articulate its values, judgments and commitments (ibid., 34). In this way, language is a constitutive element of the self insofar as it is an element of the self's self-interpretation (ibid., 35). Taylor makes this explicit in *Ethics of Authenticity* (1991, 33), when he states that a person does not develop their identity or outlook of life via solitary reflection. According to Taylor, it is impossible to develop the necessary modes of expression alone. One's identity is fundamentally dialogical in nature, meaning that one only comes to understand oneself via others' perception of oneself. Hence, we define ourselves, according to Taylor, via sameness and difference that we identify in others (ibid., 35-36).

Added to this, if language is an element that enables self-articulation, and if language is a medium of articulation that only occurs within a communal setting, as Taylor argues, then the self, for Taylor, is further imbedded within the ontology of the world, insofar as the self can only be regarded as a self in relation to other selves (Taylor 1989, 35). Taylor claims that the self develops a self-understanding of concepts such as love and anger through engaging in common moral space (ibid.). This is not to suggest that our identity is determined by others but rather that our identity is informed by the horizon in which we exist. Taylor (ibid., 37-39) argues that we have the ability to self-articulate our identity via self-choice. However, his conception of self-choice fundamentally opposes the idea that self-choice is *a priori*. For Taylor (ibid., 37) one's choice can only be a significant choice if it is a choice that is informed by the self's moral space. Without the moral space, the choice would lose its significance, as a choice can only have significance when the self has to choose between

certain aspects. Thus, it is the moral space that gives meaning to the self's choice (ibid., 38-39).

It is this continual dialogical movement that characterises the identity of the self as a self always in a state of flux. By this I mean to suggest that the Taylorian self can never have a predetermined fixed identity. The self is in a state of flux as the elements constitutive of the self can never constitute it indefinitely, as the self is in a continual state of being and becoming (Taylor 1989, 47). One's sense of 'the good', identity, self-interpretation and horizon in which one is situated are all entangled elements of one's life that contribute to this continual unfoldment (ibid., 47). Thus, Taylor views the self's life as an "unfolding story" (ibid.), the self grasps an understanding of itself via a narrative method.

Taylor claims that the self understands its current situation in relation to where it was before. Hence, one can only conceive of where one is going by acknowledging or remembering where one has come from. The self's current being is informed by where it has been and where it is going; and it is this kind of orientation that Taylor refers to as a story (ibid., 48). This idea will be discussed in the following subsection, as MacIntyre too develops this narrative understanding of identity.

In essence, Taylor (ibid.) is critical of the liberal self, insofar as it is a 'neutral self' – i.e. a self that is only determined by its capacity for autonomous choice – as he argues that to think of a human being apart from its horizon is pathological (ibid., 31). Taylor argues were individuals to be torn from their commitments, this would result in the individual having an 'identity crisis' (ibid.). This means the individual would, as Taylor puts it, "be lost at sea" (ibid., 27), as the individual would be disorientated to the point that it would put into question the type of person it is. Thus, Taylor claims that the identity of the individual is fundamentally intertwined with its commitments. That is precisely why, Taylor argues (ibid., 29), that when persons define who they are, they do so in relation to their social position and their relationships with others. Thus, when we explain who we are, this explanation is reliant on our orientation to the frameworks which we find ourselves in (ibid.). It is this explanation of the self that gives the impression that it is narrative in nature.

Hence, Taylor directly critiques the Rawlsian self when he argues that to view the self as free from all frameworks is to think of a self "in a grip of an identity crisis... one rather has a picture of a frightening dissociation" (ibid., 31). To think of a self with no orientation is to think of a self so empty that it is nothing but a shell of a human being. Thus, the Rawlsian

self, constituted only by its ability for rational autonomous choice and as such its identity determined prior to its orientation with the world, would for Taylor, be a self outside of the space of understanding as it is a being without any form of ontological identity (ibid., 35-36).

Taylor argues that the tradition of individualism and the claim of neutrality representative of the Rawlsian self is an ideal (ibid., 37). The ideal is that persons have the heroic ability to transcend the contextual boundaries of their time. Taylor argues (ibid., 37) that it is an ideal precisely because it is impossible to pull oneself out of the moral, social and historic web one finds oneself in. Thus, Taylor argues it is precisely this embeddedness that defines our human condition, and as a result for the liberal tradition to view the self as independent of the ontology of the world is to misunderstand the self and its human condition (ibid.). Let us now move to MacIntyre's view of the self and how it differs from the Rawlsian self.

4.3.4 MacIntyre and the 'Emotivist Self'

Alasdair MacIntyre (2007, 61), much like Taylor, does not critique Rawls's 'justice as fairness' directly. He critiques modern liberal society in general for the deterioration of moral culture, which will be discussed in the following section. He argues this deterioration is a result of the emotivist culture it instils, which is a consequent of the fact that liberal society is neutral about 'the good' (ibid., xv). MacIntyre's accusation – that the liberal idea of the neutrality of 'the good' fosters the rise of the emotivist individual – applies to Rawls's theory of justice as well insofar as Rawls's theory of justice falls within the liberal tradition.

The liberal self, or the emotivist self, according to MacIntyre, is problematic as it is "criterionless" (ibid., 33). This self is devoid of all criteria due to the fact that the self is detached from its social circumstances. In other words, the abstract theoretical nature of the self, i.e. the self's ability to stand removed from the social world in which it exists, implies that this self has no necessary social identity. This is due to the fact that liberal theory argues that no contingent social factors determine the essence of the self. It is the abstract theoretical nature of the self that MacIntyre finds worrying, as it is suggestive of a ghostly individual, an individual removed from its own history (ibid., 32).

MacIntyre traces the rise of this problematic, abstracted individual to Kant's moral theory specifically, but more broadly to the theoretical paradigm⁵⁴ that strove for objective rational

⁵⁴ MacIntyre (2007, 51) refers to thinkers such as Kierkegaard, Diderot, Hume and Smith, all whom were part of the same theoretical paradigm that strove for objective rational justification. Insofar as Rawls's theory of justice

justification (discussed in Chapter 1), whereby thinkers such as Kant developed rational justification for *a priori* moral principles (ibid., 51). In other words, moral principles, they argued, should be agreed to by all persons independent of their specific empirical circumstances (ibid., 44-45). MacIntyre argues that Kant and his predecessors sharing his views, paved the way for the moral decline in culture as they eroded the need for moral public justification as well as for justification itself to be influenced by societal circumstances (ibid., 50-52).

MacIntyre, much like Taylor, finds this worrying, as to conceive of a self removed from its own social context, is to conceive of no self at all, since MacIntyre argues that a self is fundamentally constituted by the world in which it finds itself (ibid., 50-52). Due to this, MacIntyre (ibid., 126) critiques theories like Rawls's which prioritise 'the right', insofar as these theories argue that 'the good' is not a constitutive element of the self, nor of society. Instead the exact opposite could be said, according to MacIntyre (ibid., 52). For him, 'the good' is the defining constitutive element of the self and society and 'the right' would be determined by 'the good'. Insofar as MacIntyre argues in favour of a teleological theory as opposed to a deontological theory of morality and of justice, he would argue in favour of prioritising 'the good' over 'the right', when developing a moral and political theory. Let us now turn to MacIntyre's moral theory in order to understand why for him 'the good' is a constitutive element of both the self and society.

MacIntyre (ibid., 126) argues that not only is it impossible, but it is to misconstrue the nature of the self, to view the self as stripped of its empirical situatedness, free from its social roles, defined only by its rational capacity in the hope to attempt to reveal an underlying true self. MacIntyre argues that by undertaking such a task, liberal theory has set the self free from social institutions, but in doing so has imprisoned the self into a false and meaningless identity (MacIntyre 2007, 60-61). According to MacIntyre, the self can only gain a meaningful identity by its awareness of its facticity (ibid., 33-34), meaning that the self's identity is not static but a constantly evolving identity that is shaped by the everchanging social relations that constantly define and redefine the self. The implication of this is that social relations are a constitutive element of the self as they are not accidental characteristics but integral aspects of the self's substance (ibid., 33-34).

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'.

In order to show how facticity constitutes the self's identity, we can refer to MacIntyre's three concepts of narration, tradition and practice. For MacIntyre, the self is a character insofar as its identity is unfolding. This unfolding takes place within a setting. MacIntyre (ibid., 243) uses the analogy of a setting in a story, whereby the characters (i.e. the self) and the plot (i.e. the choices the self makes) unfold against a background. MacIntyre (ibid.) argues that the self, its identity, as well as the goal and purpose of its life unfold against the backdrop of history. It is this historical backdrop that informs the self's conception of itself and its conception of 'the good'. Hence, it is only through the self's awareness of its historicity that it develops a meaningful identity.

In relation to this, MacIntyre (ibid., 221) argues that the self's identity is informed by the traditions of its time. These traditions inform the particularity of the self's social, moral and political identity. Just as MacIntyre rejects the theoretical view that underlies the liberal self, that actions can be evaluated independently of the context in which they apply to (ibid., 200-204), MacIntyre erodes the idea that principles can be abstract in that they are not influenced by the social context in which they are developed. According to MacIntyre, all moral and political principles are informed by and developed from a certain tradition. Hence, all principles embody the relativity of the tradition in which they are developed (ibid., 204-205). MacIntyre (ibid., 222) states that tradition is the empirical framework within which the self's narrative unfolds. It is this tradition that informs practices within society to the degree that practices embody the current paradigm of the time.

Practices, according to MacIntyre (ibid., 221), are institutional standards or communal customs that the self, on the one hand is 'thrown' into (i.e. is born into), and on the other hand, can take up by choice. Practices embody certain ideas of 'the good', both internal and external goods. The self, by choosing to partake in certain practices over others, chooses to cultivate certain virtues over others, and in this way the self's moral identity is developing in relation to the communal tradition in which the self is situated (ibid., 223). Hence, the self navigates society by the forms of conduct that certain practices define as acceptable in society. In this way, the self and the way it portrays itself within society are largely influenced by the practice themselves (ibid., 175 & 223). This is not to suggest that the self adopts all practices without reflecting upon these practices. MacIntyre argues that the self has the ability to change the practices, and hence alter the current paradigm, but this can only be done by adopting the practices in its current form (ibid., 178). Due to this, MacIntyre does

allow room for the self to have autonomous influence on its formation of ‘the good’, however always from within the tradition it finds itself in.

MacIntyre, in developing this account of the self, turns to Aristotelian virtue ethics, specifically the notion of a *telos*, a goal or objective, to justify the necessity of social facticity. MacIntyre, following Aristotle, argues that insofar as the self is viewed as having a purpose to strive towards, the concept of the self has meaning (ibid., 58-59). In acting out the goal of the self, the self is acting from inclinations, as it is precisely these inclinations that aid the self in forming its own good (ibid., 148). Thus, the purpose the self should strive towards is determined both by itself and the community in which it finds itself, as the criteria to determine ‘the good’ are not objective impersonal criteria, but rather a complex measure that appeals to the facticity of the individual (ibid., 155).

It is precisely this aspect of modern liberal society – the fact that that morality is not a constitutive factor of the self nor of society – that, according to MacIntyre, has resulted in the decline of moral culture and hence the rise of the emotivist self (ibid., 19). In order to explicate MacIntyre’s critique, let us now turn to the discussion of whether society should prioritise ‘the right’ or ‘the good’ in political theory in the context of the work of the thinkers discussed in this chapter.

4.4 The Methodological Conflict Between the Priority of ‘the Right’ vs the Priority of ‘the Good’

MacIntyre, Sandel, Taylor and Walzer are all in agreement, insofar as they uphold the view that ‘the right’ should be dependent on and hence be derived from ‘the good’, thus resulting in them arguing in favour of prioritising ‘the good’. All these thinkers develop different arguments in favour of prioritising ‘the good’, although they all uphold the same central thesis that a theory of justice should not be neutral about ‘the good’. Given that, these thinkers critique Rawls for developing a neutral account of ‘the good’. Let us now first turn to MacIntyre’s justification for the prioritisation of ‘the good’.

4.4.1 MacIntyre: The Decline of Moral Culture

As stated, MacIntyre (ibid.) argues that current liberal society is plagued by the decline of moral culture due to the fact that no rational consensus can be reached regarding moral concerns. He argues this deterioration is a result of the fact that liberal society is neutral about ‘the good’ (ibid., xv). MacIntyre has an issue with a society marked by moral pluralism –

such as our current modern liberal society – as it results in conflicting claims of morality without establishing a normative framework in which to judge competing moral claims (ibid., 8). MacIntyre (ibid., 32) argues that a society marked by moral pluralism is unable to resolve moral disputes, precisely because it lacks the rational normative framework in which to adjudicate moral disagreements.

In a society marked by moral pluralism, moral arguments themselves are often logically valid, i.e. by accepting the premises themselves one should necessarily accept the conclusion. However, moral arguments are not necessarily sound, as it is the content of the premises themselves that are the point of conflict for MacIntyre (ibid., 228). Each premise embodies certain normative values, and if there is no overarching normative framework against which we can judge all the conflicting premises, then society itself can never settle disagreements regarding morality. Hence, MacIntyre (ibid., xiii) argues that an overarching normative framework is necessary in order to settle disputes, as it is this framework that enables persons to accept or dispute certain premises themselves.

Liberal society is defined by moral pluralism, due to the fact that liberal society is neutral on the question of ‘the good’. In other words, citizens of a liberal society can decide for themselves what is of moral value. Hence, these individuals can choose for themselves what gives their life meaning. The state does not prescribe comprehensive moral values.

Consequently, the state does not wish to, nor can it settle moral disputes as it has no objective or impersonal frame of reference to settle them against. As a result of morality being determined by contingent factors, modern liberal society is marked by moral relativism. Moral relativism is problematic for MacIntyre, as it erodes the possibility for society to be unified behind one moral culture (ibid., 18-19). Prior to explaining the importance of moral culture for MacIntyre, it is important to address how individuals relate to one another in a society marked by moral relativism (ibid.).

According to MacIntyre, modern society is characterised by the emotivist doctrine insofar as all claims individuals make of any moral judgment can themselves be nothing more than personal expressions of desires, choices or feelings (ibid., 12). Hence, moral judgements can be justified, however this justification is relative, in that justification is dependent on contingent factors such as choice. This is problematic for MacIntyre as these moral judgements can hold no objective value as they do not appeal to any objective method or authority for justification (MacIntyre 1988, 336-8 & MacIntyre 2007, 19). As a result of the

relativism entrenched in moral justification, MacIntyre therefore argues that the liberal individual cannot appeal to impersonal criteria, for there are no impersonal criteria which to appeal to (MacIntyre 2007, 24).

There are no impersonal criteria for judging moral claims due to the theoretical structural relation of the priority of 'the right'. The fact that modern society is based on liberal theory, which develops 'the right' independently of and prior to 'the good', results on the one hand in the content of 'the right' and its method of justification being objective, insofar as persons can appeal to impersonal criteria to judge claims of justice. However, on the other hand, the same does not apply for moral claims as liberal theory is neutral about 'the good', as mentioned above, claims of what is considered to be morally good are not decided upon by citizens in the public sphere of society. Moral claims are justified by each individual. Each individual can appeal to any moral value, insofar as it does not conflict with the content of 'the right' i.e. the principles of justice. MacIntyre argues that this neutrality of 'the good', that liberal theory argues for, is responsible for the emotivist culture in society, and hence for the rise of the emotivist individual (as discussed above) (ibid., xv). Therefore, MacIntyre argues that the problematic structure of the priority of 'the right' has further led to a problematic conception of the self.

Thus, MacIntyre argues that what is favourable to him about Aristotelian virtue ethics is that 'the good' is determined by and informs all aspects of society. Due to this, Aristotelian virtue ethics develops an essential interconnected link between morality and justice. Both are necessary elements of society; hence morality cannot be restricted to the private sphere of society as morality informs what is considered to be just or unjust in society (ibid., 152). Furthermore, in an Aristotelian society where 'the good' determines 'the right', and 'the good' is shared among the citizens of a society, the implication that MacIntyre finds appealing is that there is a moral bond that is formed between citizens of a society (ibid., 156).

This moral bond is the collective recognition of a good which is responsible for the united community within Aristotelian virtue ethics. It is this united community behind one common good that MacIntyre argues that modern liberal society lacks (ibid.). It is precisely because liberal society restricts 'the good' to the private sphere that it lacks the comradery evident in societies where citizens share in the recognition of a common good. MacIntyre claims that a society characterised by moral pluralism will result in nothing more than moral decline

because there is no united moral bond (ibid.). And as mentioned, it is, according to MacIntyre, this rejection of ‘the moral unity of Aristotelianism’ embodied in the priority of ‘the right’ that is responsible for the decline of moral culture in liberal society. It is for the same reason, as mentioned, then that MacIntyre turns to Aristotelian virtue ethics to demonstrate the positive communal bond in theories that prioritise ‘the good’ (MacIntyre 2007, 155-156). Let us now turn to Taylor’s argument.

4.4.2 Taylor: Moral Identity as a Constitutive Element of the Self and Society

Charles Taylor, much like MacIntyre, argues that to view moral and political theories as neutral in terms of ‘the good’, is to misunderstand the necessary relation between justice and morality. According to Taylor this relationship has to be constituted by prescriptive force (Taylor 1989, 53). Taylor critiques theories of justice that prioritise ‘the right’ for trying to justify a neutral political theory. The basis for his critique is his view that a person’s identity is determined by their relation to the moral horizon in which they exist and hence, that their sense of ‘the good’ orientates them to the world (as discussed in the previous section).

Thus, the self for Taylor is at all times constituted by its moral identity, and as such, Taylor argues against many liberal thinkers such as Rawls, that moral identity is an essential constitutive element of the self and society. According to Taylor, the moral identity of the self is informed by multiple conceptions of ‘the good’ and as such, the self has to be able to develop a ranking of higher-order goods (ibid., 62-63). This means that the self determines which goods it wishes to give preference over others. It is these higher-order goods that then override the self’s other goods that come into conflict with these higher-order goods. Thus, these higher-order goods act as the point of reference in order to weigh up the relevance of multiple competing goods.

Taylor argues that just as the self has to develop an ordering of its goods, so too does society. Taylor refers to this form of higher-order goods as ‘hypergoods’. Hence, ‘hypergoods’ provide the framework in which to judge competing societal goods (ibid., 63). ‘Hypergoods’ act as a pivotal point around which moral culture is centred, and to a degree it acts as a ‘universal ethic’ (ibid.). By universal ethic Taylor does not imply the idea that ‘hypergoods’ embody a sense of absolute truth, but rather that it is a relative truth that acts as a unifying signifier of the current historical moral milieu (ibid., 64).

Taylor notes that ‘hypergoods’ are a point of conflict in society, firstly, because ‘hypergoods’, are a result of societal formation, hence, they change in relation to historical

developments. During certain historical developments, some ‘hypergoods’ will be encouraged over others resulting in the replacement of other ‘hypergoods’. Insofar as a relative universal ethic replaces another relative universal ethic the conflict is evident in the challenge that occurs between the ‘hypergoods’ themselves (ibid., 65). Taylor argues that these ‘hypergoods’ themselves are contingent and as a result they may embody forms of domination that are present during certain historical periods (ibid., 71).

Moreover, Taylor (1985, 207) unravels the liberal argument for the neutrality of the state in terms of the claim that political institutions should themselves be neutral, as he points out that it is fundamentally impossible for a liberal society to have neutral political institutions as it is precisely these institutions that need to foster the ‘hypergood’ of society (ibid.). Hence Taylor argues that liberals should be more concerned about the structure of their society as it is the institutions themselves that will incubate the public desire for the recognition of and hence the primacy of freedom (*viz.* their ‘hypergood’) necessary for a flourishing liberal society (ibid.). Given the above, Taylor argues that the priority of ‘the right’ can never embody the necessary neutrality of the self nor society it argues for, as the content of ‘the right’ and its application are relative.

Rawls does not deny that there is a level of relativity with regards to the content of ‘the right’. In developing ‘justice as fairness’ he argues that citizens are informed by a ‘thin theory of the good’, when constructing their principles of justice. The ‘thin theory of the good’ is constituted by primary goods – the shared fundamental goods necessary for citizens to participate within society – as well as by the ‘fixed point of considered judgments of justice’ (i.e. the appeal to liberty of conscience). Insofar as artificial agents reason in line with a ‘thin theory of the good’, they reason, Rawls argues, from an objective good. It is objective as the content of ‘the good’ is general, meaning that agents rationalise about principles of justice without invoking their comprehensive goods. In other words, agents invoke purely their public good when reasoning about ‘the right’ (Rawls 1996, 220).

Taylor does acknowledge that Rawls attempts to give some kind of account of ‘the good’ within his theory of justice, which Rawls refers to as a ‘thin theory of the good’. However, Taylor critiques Rawls’s ‘thin theory of the good’ for being too general in terms of its content. Taylor (ibid., 89) argues that this possibility of reasoning in terms of a general theory of ‘the good’ is impossible and as such discredits Rawls’s idea of the ‘thin theory of the good’. As such, I would state that for Taylor, that it is impossible to suggest that agents have

the possibility to reason in line with only certain goods at specific times, since an agent cannot reason about principles of justice without invoking their comprehensive goods as it is these goods, Taylor (ibid., 51) argues, that orientate the self to the world. And as such, although both Rawls and Taylor acknowledge that a society is marked by a relative universal ethic – Rawls refers to it as the fixed considered judgment of justice, while Taylor refers to it as a ‘hypergood’ – Rawls argues that citizens can invoke their public good, i.e. their general good, when developing the content of ‘the right’, while Taylor rejects Rawls’s distinction between public and non-public goods completely. Taylor argues (1989 49-51) that the self, when deciding on the content of ‘the right’, does not have the ability to reason in line with this Rawlsian dichotomy as the self is constituted at all times by all of its goods. Therefore, the self, according to Taylor, cannot be that which can even conceptualise of itself in terms of compartmentalised goods.

In essence Taylor critiques the liberal view that a political theory can be developed in line with a ‘thin theory of the good’. In other words, Taylor is critical of the promise of the priority of ‘the right’ – evident in liberal theory – that a political theory does not need to rely on a comprehensive conception of ‘the good’. Michael Walzer, similar to Taylor, is critical of the possibility of developing a theory of distributive justice from a ‘thin theory of the good’, let us now turn to Walzer’s argument.

4.4.3 Walzer: Distributive Justice and the Issue of Abstraction

Walzer could be said to be concerned with the methodological approach Rawls uses in developing ‘justice as fairness’ as he argues for a particular as opposed to an abstract methodological approach. He is critical of Rawls’s approach as he suggests that the principles of distribution that are responsible for the allocation of goods within society should not have an abstract foundational source (1983, 4-5). Rather, he suggests that the goods themselves, and the principle of distribution which governs them, only gain their meaning from the societal context in which they apply (ibid.). Walzer could argue that Rawls’s theory of justice does not account for the pluralism of goods. However, before addressing why Walzer could argue that Rawls’s ‘justice as fairness’ does not take into account the pluralism of goods, it is pertinent now to discuss why Walzer argues that the distribution of goods is marked by pluralism.

Walzer, in *Spheres of Justice: A Defence of Pluralism and Equality* (ibid., 3), points out the complexity of the distributive system that plagues societal formation. He states that the issue

of distributive justice is a complex issue as the content of this kind of justice is marked by a multiplicity of views on the nature of 'the good' itself as well as a multiplicity of procedures in which it is distributed (ibid., 4). For instance, a theory of distributive justice has to account for the distribution of immaterial goods such as love, knowledge, punishments, honour as well as material goods such as food, transport and medical care, to only name a few (ibid.). Furthermore, Walzer states that society is marked by both multiple complex and simple distributive procedures, the latter involving institutional systems such as asylums, kindergartens and monasteries; and the former involving the market (ibid.).

Walzer gives examples such as these to argue his point that pluralism is an ever-present characteristic of the distribution of goods in society. Thus, he argues (ibid., 5-6), there has not been and there is currently not, nor can there ever be, a singular universal system to account for the distribution of goods. Walzer (ibid., 6) makes this latter claim as he argues that goods develop meanings and purposes via societal structures. As goods are a result of social processes, they lose their meanings when one tries to analyse them abstracted from the circumstances in which they were created. No good can have one single meaning, as Walzer argues that the value of all goods are dependent on the context within which they exist (ibid.,7). To the extent that Walzer (ibid.) claims that the meaning of goods is socially constructed, it could be argued that the meaning of 'the good', for him itself changes with time. Just as the meaning of goods changes with time, so too does the movement of that good, according to Walzer, as the societal value of that good determines the just or unjust distribution of it (ibid., 8-9).

Thus, precisely because goods are pluralistic in nature, principles of justice that manage the distribution of goods need to mirror this pluralism too (ibid., 6). Walzer points out that throughout history it has been, and still is, the compulsion of the philosopher to attempt to search for, or develop, one singular universal criterium to order the distribution of goods. It is this compulsion, Walzer (1994 21-23) argues, that Rawls falls prey to in his theory of justice. Walzer (ibid., xix), states that philosophers such as Rawls should rather seek to develop distributive principles of justice from within a society's cultural context; they should not try to escape the context in order to develop objective principles.

Walzer, in *Thick and Thin: Moral Argumentation at Home and Abroad* (1994), further clarifies his methodological approach to the question of justice by elaborating on the inescapable dualism present in moral argumentation. He regards this dualism as inescapable

as the tension between the universal and particular methodological approach present in moral and political theorising is a necessary feature of human society (ibid., 8). Walzer conceptualises this dualism with the contrasting notions of ‘thick’ and ‘thin’ accounts of moral argumentation (which was alluded to in the beginning of this chapter) (ibid., x-xi).

Walzer (ibid., 2-4) uses the notion of ‘thick’ to refer to the contingent orientation of moral arguments and their particularist meanings. In other words, Walzer (ibid.) argues that questions of justice such as the distribution of goods should be developed within the ‘thickness’ of society. By ‘thickness’ he means to imply the idea that particular disagreement is a necessary characteristic when developing principles or policies of justice (ibid., 3). He refers to this ‘thick’ account of moral argument as having a “maximal meaning” (ibid., 2). By “maximal meaning” (ibid.) he implies that the moral undertone for the justification of certain political principles is embedded in the morality and culture of a specific society, meaning that political principles cannot be developed from an abstracted methodological position (ibid., 11-12).

According to Walzer an abstracted methodological position is a feature of ‘thin’ moral arguments. He regards this type of moral argument as ‘thin’ precisely because it embodies a universal ideal, or a universal agreement (ibid., 4). In other words, it embodies a universally accessible idea or principle and as such its appeal is independent of one’s particular orientation (ibid., 3). This type of reasoning is representative of ‘thinness’ as it has a moral minimalist undertone. This means that political principles emulating an underlying universal appeal are objective to the degree that they are void of expression, they contain no evidence of their source and as such cannot be used as a tool for a particular purpose (ibid., 7). Due to this, Walzer argues that ‘thin’ moral arguments represent a critical perspective due to its detached nature (ibid., 10-11). This is not to suggest that ‘thin’ moral arguments are representative of a freestanding morality inasmuch that it is independent of and prior to ‘thick’ morality (ibid., 10).

Walzer argues in favour of a methodology that is the direct inverse of the abstracted methodology he is critical of Rawls for subscribing to. He argues as stated above, that Rawls appeals to an abstracted methodology and as such Walzer would argue that Rawls moves from a ‘thin’ to ‘thick’ moral reasoning when constructing ‘justice as fairness’, insofar as he develops universal principles of justice derived from an objective process of reasoning which can then be applied to the social circumstances of society (ibid., 4).

This is problematic for Walzer as he argues that we should move from ‘thick’ to ‘thin’ moral reasoning (ibid., 7). Walzer (ibid., 4) claims that the ‘thinness’ and moral minimalism can only be identified from within a ‘thick’ moral maximal setting. In other words, Walzer argues that there are no such things as *a priori* universal ideals that are evident prior to society. Rather the ‘thin’ universal moral value is fostered within the ‘thick’ particularism of moral society. In this way, Walzer argues, when constructing a moral and political methodology to apply to the question of justice, one must move from ‘thick’ to ‘thin’ rather than the other way around (ibid.).

This abstract methodology that Walzer critiques, is evident in Rawls’s ‘justice as fairness’. Rawls uses the notion of the original position and the methodological tool of the veil of ignorance, as well as his principles of justice that result from these concepts, to formulate his theory. As discussed in Chapter 2, Rawls develops a hypothetical procedure in which artificial agents rationalise about the principles of justice they would choose from this neutral objective position (i.e. the original position). This hypothetical process is characterised by neutrality and objectivity, as the principles of justice are a result of principles that artificial agents would choose, without knowing their particulars such as their conception of ‘the good’, their social, political and economic situation, or gender and race (Rawls 1999, 119). This is not to suggest they reason from a completely abstracted position, whereby they are influenced by no account of ‘the good’, as this would be impossible. Rather Rawls states that artificial agents reason from a ‘thin theory of the good’ (Rawls 1988, 253-259). This means that agents reason in line with a general understanding of societal norms and structures, rather than reasoning from within their own specific contingencies.

However, the principles artificial agents choose are considered just by Rawls as they embody impartiality (Rawls 1996, 191). Rawls argues, that it is imperative that the principles of justice are a result of an abstract procedure, so that they are chosen on neutral grounds (ibid.). By this is meant that the justification for the principles of justice does not appeal to any comprehensive doctrines. Hence, the principles of justice are characterised by neutral values, which Rawls argues is important in order to develop a society that respects the multiplicity of comprehensive doctrines of ‘the good’ that co-exist within a liberal democratic society (Rawls 2001, 3-4).

As the principles of justice embody this neutrality, the content of the principles of justice themselves are to a degree neutral. It is specifically the second principle, the principle of

distribution – i.e. the difference principle – which Walzer would critique for being neutral in terms of the content and the procedure of distribution insofar as it is derived from a universalist procedure. But Rawls's 'justice as fairness' calls for society to prescribe the distributions of only certain types of goods, which Rawls refers to as primary goods. Primary goods, Rawls (1996, 187) argues, are the necessary political goods that all persons require as citizens. They are general political goods that are independent of the content of any comprehensive doctrine. Thus, the content of primary goods themselves are objective in the sense that they are a standard prerequisite for any comprehensive doctrine, while their application is subjective as persons can choose how they wish to make use of their primary goods. Rawls (1999, 361) claims that it is rational to portray agents as having a desire for primary goods as these goods are the social goods that are necessary not for particular ends, but for universal ends as all rational agents require them for autonomous existence (Rawls 1980, 526).

Walzer would argue that Rawls's abstraction of goods from the context to which they apply is problematic, as it disregards the pluralistic essence of goods. Walzer (1983, 5-8) argues that it is important to shed light on the individual's relation to the world and the goods that persons would choose for themselves with the knowledge they have of the context in which they live. For Walzer, analysing the type of goods persons would choose with their actual contingencies in mind, is more representative of the essence of goods, as the goods themselves have a dependence on the ontology of the world (ibid., 5). Walzer further argues that theorists of justice should not attempt to construct a list of essential goods that all individuals need, much like Rawls tries with his conception of primary goods. As Walzer argues that the particular features of society itself determines what goods are necessary goods for individuals of a particular society and even if there are some goods that are necessary in many societies, the meaning of these goods themselves is particular to a specific social context (ibid., 8).

Sandel, akin to Walzer, critiques Rawls's theory of justice for being grounded on an abstract foundation. Like MacIntyre and Taylor, Sandel (1982, 65) argues that such an abstract foundation, one that is independent of 'the good', cannot be a sufficient foundation for Rawls's 'justice as fairness', as it cannot provide the foundational support necessary for a theory of justice. Let us consider this critique in more detail below.

4.4.5 Sandel: Moral Desert and the Difference Principle

Before illustrating Sandel's critique, it is pertinent to give a brief reminder of the theoretical structure of 'justice as fairness' and its principles of justice (see Chapter 2 for more detail). Rawls argues that the priority of 'the right' is a necessary structural element for his theory of 'justice as fairness', as it helps to entrench his claim that "justice is the first virtue of social institutions" (Rawls 1999, 3). By 'first', he implies that justice must be given a prioritised position of importance within society as it is the highest-order virtue. This is evident in his claim that 'the right' develops the boundaries within which 'the good' can exist (ibid., 21-22). And, as is evident from my discussion by now, a society that prioritises 'the right', prioritises the principles of justice.

Within 'justice as fairness' the principles of justice, as discussed in Chapter 2, are as follows: Firstly (a), the liberty principle ensures the equality of basic rights and duties to all persons in society. (b) The second principle consists of two aspects. Firstly, that all positions and opportunities are open to all under fair and equal conditions. Secondly, the difference principle states that inequalities are permissible if only if they are to the benefit of the least advantaged members in society (Rawls 1982, 5). Rawls ranks these principles in a lexical order whereby the first principle of equal basic liberties is given priority over the second principle as a whole (Rawls 1999, 55). Sandel (1984, 89) argues that it is this content of 'the right' (i.e. the principles of justice), specifically the difference principle, which is problematic. According to him, it is based on a principle of sharing and as such it requires a stronger foundation than the detached liberal self can offer.

Before continuing with a discussion of Sandel's critique, it is also important to refer back to Rawls's idea of moral desert. Rawls argues, as discussed in Chapter 2, that contingent qualities of persons are morally arbitrary. By this, he suggests that any natural or social features such as class, gender and race should not be reasons persons can use to justify their claims of entitlements and desert within 'justice as fairness' (Rawls 2001, 75-76). Rawls argues, since no one can lay claim to morally deserving these contingent aspects of being human, then as such, persons cannot argue that they are morally deserving of the assets and entitlements they benefit from because of these contingent aspects (ibid.). Rawls (ibid.) suggests then that these assets should be regarded as communal assets to the extent that society should benefit from them. Thus, Rawls develops the difference principle as the principle of distribution, which allocates entitlements within society on the above claims for moral desert.

Sandel argues that Rawls's jump from the premise that a person cannot lay claim to entitlements that are a result of contingent societal factors, to the claim that all entitlements should be a common societal asset, is problematic (Sandel 1984, 89). Sandel claims that the fact that one person cannot claim that they are morally deserving of a certain asset, does not imply that society is morally deserving of that asset (ibid.). Thus, for Sandel a claim of entitlement by society is just as morally arbitrary as if an individual were to claim an entitlement based on a contingent factor. In other words, Sandel (ibid.) is arguing that the difference principle needs a prior moral foundation in order to justify the distribution of entitlements to benefit the common society. As Rawls justifies the difference principle based on his ideas of the rational autonomous self, the priority of 'the right' and his idea of desert, Sandel argues that the difference principle is in need of some kind of content of 'the good' in order to justify it, which Rawls's theory of justice cannot offer. Thus, according to Sandel (ibid.), Rawls develops a principle of distribution that requires a moral foundation in order to justify the distribution of assets for a shared common end. This is the caveat Sandel points out with the priority of 'the right', when he states that, "the liberal self is left to lurch between detachment on the one hand, and entanglement on the other. Such is the fate of the unencumbered self, and its liberating promise" (ibid., 97).

In summary MacIntyre, Sandel, Taylor and Walzer all critique the Rawlsian self for being a purely rational autonomous self. They all uphold the same premise that the self is first and foremost conditioned by the ontology of the world and as such its situatedness in the world informs the self fundamentally. Therefore, they critique the liberal premise that the self is first and foremost an autonomous entity independent of the world on the one hand, but yet, on the other having the freedom to determine its being in the world. In addition to this, they all argue that a society, and hence any theory of justice, has to prescribe certain ways of life and hence no theory of justice can be neutral concerning 'the good'. Similarly, as discussed, Taylor and Walzer argue that a 'thin theory of the good' is impossible, as according to Walzer, it does not provide adequate grounds for the distribution of goods. Nor, according to Taylor, does it provide a sufficient framework to explain the ontological makeup of the self. Although Sandel does not critique the 'thin theory of the good' specifically, he does argue that the difference principle needs a stronger moral foundation for its justification than Rawls's 'justice as fairness' provides.

4.5 A Rawlsian Response

Rawls, having acknowledged many of the above misgivings that moral and political thinkers raised against his theory ‘justice as fairness’, addressed many of these concerns in his later works such as *Political Liberalism* (1996). In *Political Liberalism*, Rawls makes substantive revisions to his theory ‘justice as fairness’ in order to strengthen it against its critics. In Chapter 2, I gave an exposition of Rawls’s ‘justice as fairness’ in which I explained many of the notions that I refer to below. These are notions such as, the difference principle, overlapping consensus, comprehensive doctrines, ‘thin theory of the good’ and the political idea of the person to name a few. Nevertheless, let us now analyse these concepts, in a new light, in terms of how Rawls constructs them as a means to clarify his theory in defence of its critics.

Rawls in *Political Liberalism* (1996, xvii) acknowledges that in *A Theory of Justice* in general but specifically the first edition, he does not clarify many important distinctions necessary for a comprehensive understanding of ‘justice as fairness’. These are distinctions such as the difference between moral and political doctrines and the requirements for what makes a doctrine a comprehensive doctrine (ibid., 175 & 113). In hindsight he argues that understanding ‘justice as fairness’ in light of these distinctions is crucial in order to understand how the priority of ‘the right’ works with ideas of ‘the good’.

Following from this, Rawls states ‘justice as fairness’ needs to be supplemented with a much more in-depth analysis of certain concepts which he had either not mentioned or only hinted at in *A Theory of Justice*. He is speaking of notions such as, ‘overlapping consensus’ and public reason.⁵⁵ Rawls in his later works made significant distinctions between concepts such as moral and political constructivism. He no longer refers to pluralism in *Political Liberalism* (ibid., xviii) but rather reasonable pluralism. Similarly, Rawls comes to identify his view of the person as a specifically political conception of the person (ibid., xix). All of these alterations lead Rawls to narrow down ‘justice as fairness’ in terms of its scope from a very general scope to a more specific scope. This change in scope will become clearer throughout this section, while I illustrate the clarifications Rawls made to ‘justice as fairness’. The first clarification I will address is the political conception of the person, which I turn to now.

⁵⁵ I refer to the notion of overlapping consensus and public reason as needing revision because Rawls does mention these concepts, specifically overlapping consensus in his early work, such as *A Theory of Justice* (1999, 340). The way in which Rawls uses these notions in his earlier work diverges significantly from his later works. It is only in his later works, such as *Political Liberalism* (1996) in Lecture IV and VI, that Rawls develops a comprehensive discussion of overlapping consensus and public reason.

4.5.1 The Rawlsian Self

Rawls, I argue, on the one hand does develop an autonomous view of the self, but on the other hand, he also does ground the self in the ontology of the world. It is essential to acknowledge both aspects as it gives a more holistic view of the self than the Rawlsian self that is presented by the communitarians. I now turn to the discussion of the Rawlsian self.

Rawls, in *Political Liberalism* (1996, xli), unambiguously states that he is developing a political and not a moral conception of justice. By this he means to infer that his theory of justice, ‘justice as fairness’, is fundamentally political in application and content. Therefore, firstly, ‘justice as fairness’ is designed to apply to the basic structure of society (i.e. political, economic and social institutions). Secondly, ‘justice as fairness’ is political in content, meaning that it is not prescriptive in terms of a comprehensive understanding of ‘the good’. In other words, ‘justice as fairness’ does not prescribe specific moral, philosophical or metaphysical ideals but instead develops a theory that is general in moral scope (ibid., 13). By this, Rawls clarifies that ‘justice as fairness’ is a partially comprehensive theory of justice,⁵⁶ in that it allows multiple conflicting comprehensive (as Rawls claims) moral doctrines to co-exist within the bounds of its political conception of justice.

Therefore Rawls, from *A Theory of Justice* to *Political Liberalism*, on the one hand, kept the moral scope of ‘justice as fairness’ as wide as possible by still being neutral concerning ‘the good’. On the other hand, he narrowed down the scope of his theory insofar as he narrowed down the content and application of it to only the political. In doing this, he again clarified his theory by stating that the subject to which this theory applies, is a political and not a metaphysical subject.

The Rawlsian view of the self is political in that this view of the self is general in scope. This implies that, because the conception of the self is not dependent on a certain metaphysical theory which prescribes a specific view of the self, this self is compatible with various

⁵⁶ I stated in Chapter 1, that I disagree that Rawls develops a partially comprehensive theory of justice and instead I argue that he develops a predominantly comprehensive theory of justice. I argue this as I claim that the doctrines of ‘the good’ that exist in a Rawlsian society are in fact circumscribed accounts of ‘the good’ and not comprehensive accounts of ‘the good’ as these accounts of ‘the good’ are fundamentally limited by ‘the right’. It is only in the following chapter that I introduce my argument described above. For now, in this last section of Chapter 4 I give an exposition of why Rawls regards his theory of justice as partially comprehensive and how he interprets this to impact his theory of justice. In Chapter 5 and 6 I will re-evaluate this notion of ‘justice as fairness’ as a partially comprehensive theory of justice.

metaphysical doctrines (Rawls 2001, 19). In this way Rawls refers to the self as political as it is characterised by the most general normative assumptions.

Rawls specifically characterises the self with the most general normative assumptions as he is developing a theory of justice for a modern liberal democratic society. Since a modern liberal democratic society is marked by moral pluralism, he characterises the self in line with the social and political ideals of a democratic society (Rawls 1988, 267). Therefore, Rawls I argue, does in fact characterise the self in line with the ontology of the world in that he prescribes the basic essential overarching features that are sufficient for all persons for them to be free and equal cooperating members of a liberal democratic society (Rawls 1999, 442). However, the self's characterisation is general in scope to the degree that persons can uphold both this political conception and appeal to their own specific philosophical or metaphysical theory of the self without conflict (Rawls 1996, 29).

Rawls characterises the political view of the self with certain moral powers that he deems it necessary for persons to have in order to be a participating citizen of a modern liberal democratic society. These moral powers are the sense of justice and moral capacity, and in later works such as *Political Liberalism* (ibid., 48-49) he refers to them as 'the reasonable' and 'the rational'. By Rawls characterising the self with these two aspects, he is acknowledging that morality and justice are both constitutive elements of the political self. Neither one is given a higher position of importance or seen to be more constitutive of the self than the other. Just as Rawls views 'the right' and 'the good' as complementary elements in society, so too does he view the sense of justice and the sense of morality as complementary aspects of the political self (Rawls 2001,140).

They are complementary in that they are both equally necessary elements for the political self to have in order to function in a democratic society. It may appear at first that the sense of justice is given a prioritised position of importance due to the fact that Rawls prioritises 'the right', however this is not the case. Rawls prioritises the question of justice, not the capacity persons have for developing principles of justice. The capacity persons have for developing principles of justice and the capacity persons have for pursuing their own conception of 'the good' are equally important, as each play a specific role within 'justice as fairness'. The capacity for 'the good' or morality, as will become clearer below, is necessary as citizens appeal to their moral sentiments in order to justify a conception of justice. Due to this I

disagree with the communitarian critique that for Rawls morality is not a constitutive element of the Rawlsian self.

Let us now analyse just how autonomous the Rawlsian self is. Rawls's 'justice as fairness' is characterised by political constructivism, an alteration he made to his earlier conception of justice. Rawls regards 'justice as fairness' as a political constructivist doctrine. As modern liberal democratic society is characterised by moral pluralism, persons can only collectively agree on principles of justice (Rawls 1996, 98). As stated previously, Rawls develops a hypothetical process of reasoning, i.e. the original position, in order to logically deduce which principles of justice hypothetical persons of a modern democratic society would choose. Rawls refers to the veil of ignorance as the methodological tool that enables this process of reasoning to be fair and equal insofar as it characterises the outcome as objective. The outcome is seen to be objective in that it is a result of an impartial or neutral procedure whereby persons' choice of a theory of justice is not influenced by their own subjective comprehensive conceptions of 'the good'. However, Rawls makes clear that the procedure itself is not objective in content (ibid., 191-192), meaning that the content of the principles of justice are specifically tailored for a modern democratic society.

In this way the artificial self is autonomous to the degree that it has the ability to rationalise about the principles of justice from a detached position. But this detached position does not suggest that the self is rationalising from an abstracted transcendental position. Instead, it suggests that the self is able to step back from its specific subjective values, yet still is aware that it is developing principles of justice for a society characterised by the democratic tradition. In essence, when rationalising about the principles of justice, persons have the ability to rationalise about relativistic principles from a universal position of detachment. Hence the autonomy of the Rawlsian self exists in its ability for detachment, which is still ontologically grounded. Due to this, one could argue that the Rawlsian self does not necessarily presuppose a transcendental self as described by Sandel and alluded to by his fellow communitarians.

4.5.2 Rawlsian Society and the Place of 'the Good'

Let us now recap why the priority of 'the right' is problematic for MacIntyre, Taylor and Walzer. Before we end the section by considering, in its turn, Rawls's response to Sandel's critique of the difference principle. Taylor (1985, 207) argues that the priority of 'the right' fails as it is impossible to develop a theory of justice that is neutral in terms of 'the good'. All

political institutions of society have to uphold the moral norms of that society, which Taylor refers to as 'hypergoods', hence political institutions cannot be morally neutral. Related to this, Taylor (1989, 63-64) argues that a person cannot appeal to a theory of justice without invoking their comprehensive moral values, hence denouncing Rawls's argument for individuals to appeal to a 'thin theory of the good'.

MacIntyre (2007, 19) argues that theories that prioritise 'the right' are problematic as they encourage the decline of moral culture. MacIntyre (*ibid.*, 32) argues the moral pluralism present in liberal theory in general results in these societies being unable to resolve moral disputes and as a result they encourage moral relativism, resulting in a society that has no moral unity. On the other hand, Walzer (1994, 4) argues, that it is problematic that any theorist develops a theory of justice from a universal procedure. This is problematic for Walzer as universal moral values can only gain meaning and relevance when they are abstracted from a particular context and not the other way around. Due to this, Walzer could be seen to be critical of Rawls's 'thin theory of the good', as it embodies universal ideals of goods that are then applied to a particular context.

First let us now address the communitarian concern that theories that prioritise 'the right' such as 'justice as fairness' are neutral concerning 'the good'. As indicated in the above paragraphs, Rawls acknowledges that there is a complementary relationship between 'the right' and 'the good'. This implies that Rawls is very aware that any theory of justice to some degree has to appeal to the moral sensibility of persons within a society (Rawls 1999, 41 & 43). If a theory of justice does not appeal to the moral sensibility of persons to which it applies, persons of such a society would have no desire to uphold such a theory.

At the same time, I argue that Rawls acknowledges MacIntyre's worry about the moral relativism present in liberal theory. As alluded to, Rawls states that persons gravitate towards a theory of justice that best embodies their moral sensibility (*ibid.*). As liberal democratic society is characterised by reasonable pluralism, individuals could be left gravitating towards conflicting theories of justice, thus, resulting in both the question of justice and morality being left undetermined.

This is Rawls's predicament given the fact that he is developing a theory of justice for a society that is characterised by reasonable pluralism he has to, on some level be neutral about 'the good'. This means, that on the one hand, he is aware that he cannot develop a theory of justice that prescribes comprehensive moral values, but on the other hand, he cannot develop

a theory of society that shares no core moral foundation as citizens of such a society would have no moral obligation to uphold the first principles of such a society. Therefore, Rawls argues the only way in which a theory of justice can embody enough authoritative moral weight for citizens to desire to adopt this theory of justice, is for a theory of justice and its first principles to exemplify a common moral virtue (Rawls 1999, 158).

In trying to overcome this predicament Rawls suggests that persons reason about the question of justice in line with a general idea of ‘the good’. This general idea of ‘the good’ encompasses two fundamental aspects, namely ‘goodness as rationality’ and ‘fixed considered judgment of justice’. Let us address the former first. Rawls in *A Theory of Justice* (1999) refers to this general idea of ‘the good’ as ‘thin theory of the good’, as discussed in Chapter 2. In his later works such as *Political Liberalism* (1996, 178), he does away with the terminology of ‘thin theory of the good’ and encapsulates its meaning in the concept ‘goodness as rationality’.

By changing this term, I argue, he acknowledges that the scope of ‘the good’ within ‘justice as fairness’ is wider than he initially implied it to be. Rationality is used as a qualification for ‘the good’, in that he implies that the conception of ‘the good’ that persons are characterised as reasoning from is a general idea of ‘the good’, which is rational for all persons to want independently of their comprehensive doctrines of ‘the good’ (ibid., 178). This idea of ‘the good’ is general in that it is not informed by the comprehensive moral values that persons subscribe to. In this way Rawls refers to these goods as political ideas of ‘the good’, as they are general in content to the degree that many conflicting reasonable comprehensive moral doctrines can identify with these ideas of ‘the good’ (Rawls 1999, 361). This is not to suggest that the content of ‘goodness as rationality’ is so general as to not be prescriptive.

‘Goodness as rationality’ encapsulates the notion of primary goods (i.e. political goods). Rawls acknowledges that his initial explanation of primary goods was not sufficient (Rawls 1999, xiii). In his later works⁵⁷ he argues that primary goods are the essential goods that the political self needs in order to be a functioning citizen of a modern liberal democratic society (ibid.). In this way, Rawls characterises primary goods as general, as they are necessary for all persons to have regardless of their comprehensive doctrines of ‘the good’ they subscribe

⁵⁷ In his later works such as the revised version of *A Theory of Justice* (1999), ‘Priority of the Right and Ideas of the Good’ (1988), ‘Social Unity and Primary Goods’ (1999), *Political Liberalism* (1996) and *Justice as Fairness: A Restatement* (2001).

too, but also as these goods are essential for persons to fully actualise their comprehensive doctrines. Primary goods, I argue, are grounded in the ontological framework of a democratic society insofar as they are necessary goods for a democratic society. Primary goods are necessary for self-actualisation within a democratic society, and hence artificial agents reason with these general goods in mind when weighing up a theory of justice.

In addition to this, the second aspect of the general idea of ‘the good’ is the identification of an overarching moral value. Rawls argues that artificial agents in the original position are moved to choose a conception of justice that best aligns with their own moral sensibility and considered judgments of justice (Rawls 1999, 41 & 43). As these agents are representative of persons living in a liberal democratic society, Rawls argues that these persons all uphold the same ‘higher-order sentiments’ or ‘broad based values’ (ibid., 436). To recap, according to Rawls, higher-order sentiments act to bind a community as they are sentiments which it is rational to assume that the vast part of a society shares (ibid., 167 & 436). In other words, these higher-order sentiments are the relativistic moral values of a community. Rawls argues that the justification of any conception of justice is dependent on the objective evaluation of the community’s preconceived moral judgements (ibid., 104). And as such, Rawls aims to objectively evaluate all ‘considered judgements of justice’ in order to discover a point of convergence between all conflicting judgements of justice (Rawls 2001, 30). Reflective equilibrium, specifically wide reflective equilibrium, acts as the method for testing whether the conjectured theory of justice aligns with person’s moral sensibility and their ‘considered judgements of justice’ (ibid., 31). This point of convergence, Rawls refers to as a ‘fixed point of our considered judgements of justice’, which, he argues, is freedom of conscience (Rawls 1999, 181).

Liberty of conscience entails that all persons have the freedom to develop, pursue and follow their own ends in line with their chosen conception of ‘the good’. Freedom of conscience, as previously stated, is a fixed point, according to Rawls, in that it is the common underlying moral value that all persons of a liberal democratic society share regardless of their appeal to their comprehensive set of moral values (Rawls 1999, 511). This is the case, even though citizens of a modern democratic society share no dominant overarching comprehensive moral value or authority due to moral pluralism which is a stable feature of the circumstances of justice of modern democratic society (ibid., 489). By Rawls identifying this fixed point, he is able to argue that citizens of a modern democratic society uphold the same overarching

general moral value. In this way liberty of conscience provides the necessary moral foundation for persons to appeal to 'justice as fairness'.

Rawls, only in his later works, such as *Political Liberalism* (1996), makes it explicit that reflective equilibrium is a method of public justification. In this way, he acknowledges that public justification and not agreement alone is fundamentally necessary for the justification of a conception of justice (Rawls 2001, 27). As persons all subscribe to multiple conflicting comprehensive doctrines of 'the good', it is necessary for persons to justify to others what they believe are reasonable principles that they themselves and their fellow citizens should support without relying on the intricacies of their comprehensive doctrines of 'the good' for justification. As stated previously, if they were to appeal to their comprehensive doctrines for justification, this would result in the relativism Rawls wishes to avoid. But if they do not appeal to their comprehensive doctrines for justification, then they would have no desire to justify such a society.

Hence, precisely because Rawls identifies this common moral value inherent to all reasonable comprehensive doctrines of 'the good', persons do appeal to their comprehensive doctrines for justification for the content of justice. Yet they do not rely on the intricacies of their comprehensive doctrines for justification, instead they appeal to the most general underlying premises of their comprehensive doctrines. In this way, I argue liberty of conscience acts as an Archimedean point for moral unity. It is a relativistic moral value, identified via an objective process of reasoning that all persons find morally reasonable to accept. I argue that it is an Archimedean point as Rawls replaces the search for moral truth with the search for what is morally reasonable and in this way this overarching moral value is an Archimedean point in that it is the closest one can come to identifying moral 'truth' within a society characterised by moral pluralism.

What I refer to as an Archimedean point, Rawls refers to as the point of convergence in a society, namely, overlapping consensus (ibid., 32). Rawls develops his argument for an overlapping consensus in his later works, to illustrate how 'justice as fairness' is reliant on an account of moral unity. This unity rests on the fact that citizens need to acknowledge that reasonable disagreement is a permanent feature of a society marked by moral pluralism and as such society will be characterised by reasonable moral conflict. But at the same time, society will be marked by moral agreement in that society upholds the moral value of liberty

of conscience. In this way 'justice as fairness' is able to develop a stable society, and this stability rests on the overarching moral value of liberty of conscience.

Therefore, I disagree with the communitarian claim that theories that prioritise 'the right' are neutral concerning 'the good'. If we take being neutral to imply that every good is given equal weight, I would argue that it is impossible for any theory of justice to be neutral regarding 'the good'. Instead, I would argue 'justice as fairness' as a theory that prioritises 'the right' is not neutral about the content of 'the good', but rather prescribes a general account of 'the good'. It is general insofar as its justification is not dependent on one specific metaphysical presupposition. In this way 'the good' to which 'justice as fairness' appeals to can be upheld alongside multiple comprehensive doctrines of 'the good'.

Insofar as Taylor (1989, 62-65) argues that all political institutions of society have to uphold the moral norms of that society, I would argue that Rawls does recognise this necessity. That is precisely why he attempts, through the process of reflective equilibrium, to find the overarching moral norm(s) that all persons in society uphold. It is this moral norm that then becomes the point of public justification for citizens when appealing to 'justice as fairness'. By identifying liberty of conscience as this universal moral norm Rawls, I argue, is able to avoid the problem of relativism, identified by MacIntyre. At the same time, he is accounting for moral unity in society with his idea of 'overlapping consensus' even though there is no public agreement concerning comprehensive doctrines of 'the good'.

On the other hand, to recap, Walzer could be said to be critical of 'justice as fairness' for developing a 'thin theory of the good' in that it embodies universal ideals of 'the good', meaning that what counts as a primary good is decided on independently of the context to which it applies. Hence, Walzer (1994, 2- 4) would critique the abstract method of justification for primary goods. This is so as he argues, as pointed out earlier, that the correct methodological approach to the question of justice and distribution of goods should be a particular and not a universal or abstract methodological justification (Walzer 1983, 8).

A particular methodological approach would take into account the particular circumstances of a society, or of an individual, in deciding how goods or resources should be distributed. Walzer could argue that insofar as Rawls argues that all persons need the same amount of primary goods and the same type of primary goods all persons require the same resources independently of their circumstances. Walzer, like Sen (1979, 364-369 & 1985, 195-202 & 1990, 111-121) – as discussed in Section 7 of Chapter 2 – would argue that all citizens do not

require the same primary goods regardless of their comprehensive doctrines of 'the good'. Rather, depending on a person's comprehensive doctrine, citizens will require more or fewer primary goods than others.

In light of this critique, one could respond that 'justice as fairness' does not rely on ideas of 'the good' that are universal in content but rather only universal in application. I mean here that both primary goods and a 'thin theory of the good' or 'goodness as rationality' embody a particularism of society insofar as they embody the general features necessary for citizens of a modern democratic society to exercise their comprehensive ideas of 'the good'. Hence, 'justice as fairness' relies on ideas of 'the good' that are relativistic, in content but universal in application to the degree that they are necessary for all persons living in a constitutional democratic society independently of the comprehensive doctrines they subscribe to.

Let us now finally turn to Sandel's critique of Rawls's difference principle. To recap, Sandel (1984, 89) argues that Rawls's difference principle as a principle of sharing needs a strong moral foundation for its justification, which he argues 'justice as fairness' cannot provide. Sandel (ibid.) argues for a strong moral foundation as he argues that there is no moral obligation between the citizens of a Rawlsian society specifically, and liberal society in general, to want to distribute their individual claims of entitlements to the benefit of society. In other words, it could be said that Sandel argues that the fact that 'justice as fairness' is neutral concerning 'the good' is precisely why the difference principle has no moral grounds.

With that said, I agree with Sandel that the difference principle does need a moral foundation. There needs to be some kind of underlying moral argument to which citizens can appeal in order to justify why entitlements should be a common societal asset and not an individual asset. An argument can be made that 'justice as fairness' does in fact provide some sort of a moral foundation for the justification of the difference principle. This moral foundation could be liberty of conscience, the equality of all persons and the idea of solidarity. Just as Rawls argues that citizens who share the same moral sentiments and 'considered judgments of justice' will support the same conception of justice, as discussed above (Rawls 1999, 421), an argument could be made that citizens who share the same moral sentiments and support the same conception of justice would necessarily support the same principle of distribution.

According to Rawls, if a society is structured in such a way as to allow individuals' claims of entitlement based on their contingent circumstances, this would imply that certain individuals have a better chance at capitalising on their freedom than others due to arbitrary

circumstances, hence, resulting in an unjust society. Rather, Rawls (1999, 149) argues that in order to respect the liberty and equality of all persons, society needs to be structured in such a way as to foster the liberty and equality of all persons by creating the optimum conditions for all persons to equally capitalise on their freedom within their given contingent circumstances.

This is precisely why Rawls develops the difference principle as the principle of distribution for 'justice as fairness'. The second principle of justice ensures (a) that opportunities are open to all persons under fair and equal conditions and (b) that social and economic disparities in society can be justified if and only if they benefit the least well off in society (ibid., 70).

Thus, the difference principle is able to safeguard the distribution of certain entitlements to the degree that it promotes more favourable social conditions for the exercise of freedom for all persons in society independently of their contingent circumstances.

Firstly, one must acknowledge, as Rawls does, that 'justice as fairness' does belong to the liberal tradition insofar as he develops a theory of justice that prioritises respect for liberty. However, it is insufficient to only acknowledge this aspect of his theory, as he does stray from liberal theorists such as Nozick that argue for a 'minimal state' that excludes any redistributive functions.

Rawls is very aware that any theory of justice has to appeal, to some degree, to the moral sensibility of the persons within that society. As established above, given the fact that he develops a theory of justice for a society that is characterised by moral pluralism he has to be neutral about 'the good'. Thus, on the one hand, he is aware that he cannot develop a theory of justice that prescribes comprehensive moral values, but on the other hand, he cannot develop a theory of justice that shares no core moral foundation as citizens of such a society would have no moral obligation to uphold the first principles of such a society. Therefore, Rawls argues the only way in which a theory of justice can embody enough authoritative moral weight for citizens to desire to adopt this theory of justice is for a theory of justice and its first principles to exemplify this common moral virtue, namely, liberty of conscience (Rawls 1999, 158).

Just as liberty of conscience provides the moral foundation for 'justice as fairness' and hence acts at the moral justification for persons to appeal to such a theory of justice, liberty of conscience could act as the moral foundation for persons to uphold the difference principle. If persons uphold the common moral value of liberty of conscience, as stated above, they

uphold the sentiment that all persons should have the same equal freedom to determine their own ends and hence choose how they wish to express themselves in their society.

If citizens of 'justice as fairness', choose to uphold this principle first and foremost by establishing it as the first principle for 'justice as fairness' than any other principle that is to be implemented has to uphold this same sentiment. As the second principle of justice (which includes both the principle of fair and equal opportunities and the difference principle) is lexically ordered, it has to uphold the sentiment of the first principle and support the actualisation of this principle.

Rawls develops the difference principle as a safeguard against huge disparities in society in terms of social and economic inequalities. The difference principle acts as a safeguard insofar as it encourages the distribution of resources to be fairer and more equal. This implies that inequalities are acceptable in a Rawlsian society if and only if they are to the advantage of the worst-off in society. As previously mentioned, the least advantaged members in society are persons who have the least amount of primary goods available to them (Rawls 2001, 58-59).

As the difference principle enables a fairer and more equal distribution of entitlements in society, it engenders a society that is structured in such a way as to encourage fairer and more equal arrangement of social, economic and political goods. If we have a fairer and more equal society it enables individuals living in a society regulated by 'justice as fairness' to better actualise their freedom of conscience within their society, as more persons have more resources available to them to exercise their conception of 'the good', than they would have had if the difference principle were not to have existed. Therefore, I argue that an argument could be made that if all persons uphold liberty of conscience and if they choose a theory of justice that best aligns with liberty of conscience, then the principle of distribution they would agree to, would be the difference principle.

Hence, one could argue that there is a moral obligation to which citizens of 'justice as fairness' can appeal to uphold the difference principle. This is the fundamental equality of persons. In other words, the difference principle relies on the fact that all persons are fundamentally equal and as such society should be structured in such a way as to acknowledge and respect this equality. Hence, the difference principle respects this equality as it calls for the distribution of resources so that all persons have the best possible opportunities given their circumstances. In this way the difference principle lowers the inequalities within society and as such respects the dignity of all persons (Rawls 1999,167).

As discussed in Chapter 2, the difference principle could be said to be grounded on the principle of solidarity insofar as agents choose to equally acknowledge and respect all persons' claims of justice and claims of 'the good'. Hence, by all persons acknowledging their same equal moral status, they develop a feeling of solidarity, and, in this way, citizens would be willing, Rawls argues, to give up certain resources for the improvement of other persons' life prospects (*ibid.*). In this sense the justification for the difference principle rests on the justification for equality and the sentiment of solidarity. But what basis of justification does Rawls provide for treating all persons as equals? What foundation does Rawls give for why we should consider persons as equal and structure society accordingly? Rawls, it seems, gives no justification for why we should consider persons as equal, yet this premise of equality is the justification he uses in structuring the original position and the content of his principles of justice. Therefore, Rawls's claim that all persons are equal and should be treated as such, is just an assumption. This, in its turn, results in the assumption that all persons would acknowledge others as having the same equal moral status to them. From these assumptions then comes the conclusion that the sentiment of solidarity is assumed to exist between citizens.

Given this, it seems as if Sandel is correct, Rawls provides no moral foundation for equality as being a primary feature of persons and consequently of society. Hence, there is no moral foundation for the difference principle. However, Rawls does acknowledge that he assumes that persons are equal and that he does not rely on a comprehensive metaphysical or philosophical doctrine to justify this quality (*ibid.*, 175). Rather, he qualifies his assumption by stating that he is developing a theory of justice for a modern democratic society. Insofar as a constitutional democratic society is characterised by moral pluralism, one of the core moral sentiments in this society is that all persons are considered equal to one another and are bearers of rights such as the right to liberty of conscience. Therefore, instead of Rawls arguing for why persons should be considered equal he starts his theory from the historical democratic assumption that persons should be considered equal.

If a democratic society exemplifies these assumptions, then maybe we should not be asking, as Sandel (1984, 90) does, why citizens would want to uphold the difference principle and what moral grounds they would have to want to uphold it. We should rather be asking why citizens of a constitutional democratic society would not choose the difference principle, considering that they buy into the assumption that all persons are equal and should be treated

accordingly. What grounds of justification would these citizens have for going against such a principle, seeing that this principle embodies assumptions they already assume?

4.6 Conclusion

This chapter shed light on the caveats of Rawls's 'justice as fairness' specifically the methodological position of the priority of 'the right' as illustrated by 'communitarian' thinkers such as MacIntyre, Sandel, Taylor and Walzer, all of whom are critical of theorists such as Rawls, who argue that 'the right' can be determined prior to and independently of 'the good'. As discussed, each communitarian critic develops their own argument about why 'the good' is the constitutive factor of both the individual and of society. Yet they unanimously argue that moral reasoning or moral choices of individuals and their respective moral milieu is a constitutive aspect of how the self understands itself and its relation to society. As such, they disagree that the question of justice should or can be addressed independently of morality. Therefore, I argue that communitarian critics critique the priority of 'the right' as being an incorrect methodological position of justification.

In response to the above critique, I presented a constructed Rawlsian response. In doing so, I firstly addressed the communitarian critique of the abstract or neutral self. I argued that the Rawlsian self is not an abstract individual that is devoid of all particular orientation. On the contrary, Rawls grounds his theory of justice on the particular fact that this theory is to apply to a constitutional democratic society and as such the self that is to adopt this theory of justice is grounded in this particular tradition. Hence, the self may have the possibility for detachment, but this detachment is never absolute for it is constituted by a particular facticity.

Thereafter I responded to the critique that theories that prioritise 'the right', neglect the role of 'the good' in society. Although Rawls prioritises 'the right', this, I argue, is not to suggest he neglects 'the good'. I demonstrated that 'the right' and 'the good' in 'justice as fairness' are complementary and as such they both are essential aspects for Rawls. Rawls argues that in order for citizens of a constitutional democratic society to want to adopt 'justice as fairness', 'justice as fairness' has to exemplify the core moral values that all persons of a constitutional democratic society share. These core moral values are values such as liberty of conscience. Rawls (1999, 3) states precisely that justice is the highest virtue, because his theory of justice appeals to, and is representative of, the moral sensibility of all citizens of a constitutional democratic society. An important qualifier of this idea that justice is the highest

moral virtue, is that justice is the highest uncomprehensive or non-comprehensive⁵⁸ moral virtue. In other words, Rawls may align his theory of justice with ‘the good’, but it is a very specific limited conception of ‘the good’. It is what Rawls calls a political good; it is general and neutral insofar as all persons can uphold it regardless of the comprehensive doctrines they subscribe to.

Hence, in light of this, Rawls does not neglect ‘the good’ or leave it undetermined as MacIntyre argued. Instead, he argues that there are certain core moral values, which are the foundation for his principles of justice that must be unconditionally upheld by all citizens of a society. It seems as if he may not argue for one singular moral truth or an overarching singular moral good that all citizens must uphold, but it does seem that Rawls may be prescribing some type of good. This issue will be the focus of the following chapter, *viz.* in conclusion to this dissertation, an analysis will be given of the overall interconnected relationship Rawls develops between ‘the right’ and ‘the good’ in ‘justice as fairness’.

Chapter 5: Reflecting on the Prioritisation of ‘the Right’ in ‘Justice as Fairness’

5.1 Introduction

Given the line of argument in the previous chapters, this chapter will now finally critically reflect on the issue of the priority of ‘the right’ within Rawls’s ‘justice as fairness’. This chapter thus aims to review, on the one hand, to what extent Rawls’s theory of justice

⁵⁸ This is not to suggest that Rawls’s theory of justice itself is uncomprehensive. Rather I am stating that insofar as the principles of justice i.e. the content of ‘the right’ embodies the latent general moral ideals, virtues or values of a constitutional democratic society then the principle of justice themselves are uncomprehensive to the degree that they are not based on one singular comprehensive doctrine of ‘the good’ for justification.

prioritises ‘the right’, and on the other hand, to trace out the implications of such a methodological analysis for theories of justice in general.

I have argued throughout that Rawls’s theory of justice prioritises ‘the right’ to the degree that he develops a theory of justice that impartially mediates the comprehensive goods within modern democratic society. With that said, as stated, I question the degree to which Rawls’s ‘justice as fairness’ is able to impartially mediate comprehensive goods. I question this, because the comprehensive goods that exist within a Rawlsian society, I argue do not exist unmediated, meaning they must conform to the bounds of ‘the right’, and, in this way, ‘the right’ does draw the boundaries around comprehensive doctrines of ‘the good’. It is in fact the implication of these boundaries that I analyse in greater detail in this chapter.

I therefore suggest to re-problematise the debate of ‘the right’ and ‘the good’ in this chapter. In other words, I invite you to rethink how we think about theories that prioritise ‘the right’ or ‘the good’. As stated in Chapter 1, the literature on theories that prioritise ‘the right’ or ‘the good’ seems to imply such theories exist in stark contrast to one another. By ‘stark contrast’ I mean that on the one hand theorists who prioritise ‘the right’ are criticised by theorists who prioritise ‘the good’ for developing a critical distance between justice and morality; whereas theorists that prioritise ‘the good’ are criticised by theorists that prioritise ‘the right’ for not developing enough of a critical distance between justice and morality. In this way, the debate itself seems to be exhausted, because it creates a kind of natural impasse.

I would rather argue that theories that prioritise either ‘the right’ or ‘the good’, commence from opposing methodological starting points and that the way in which theorists give content to the concepts of ‘the right’ and ‘the good’ gradually pushes their theories to different spectrums of the debate. I would thus recast the debate as not exhausted because of a methodological impasse, but rather show that the way in which each theorist relates ‘the right’ and ‘the good’ reflects the nuances of the debate itself. Rawls’s theory of justice demonstrates the nuances of this debate between ‘the right’ and ‘the good’ very well. He is aware of the issues on both sides of the debate; i.e. he is aware of the tension between developing too much of a critical distance (epitomised in the priority of ‘the right’) or not enough of a critical distance (epitomised in the priority of ‘the good’). I will explain in what follows how I can see this in his theory.

So, what I will propose finally in this chapter, is the idea of thinking about ‘the right’ and ‘the good’ in terms of representing two positions on a continuum⁵⁹ that are at the same time both more or less gradually similar and divergent, while the concepts of ‘the right’ and ‘the good’ as two opposing ends of the debate are noticeably distinct. A continuum, as defined by the Oxford English Dictionary, is “a continuous sequence in which adjacent elements are not perceptibly different from each other, but the extremes are quite distinct” (Oxford Dictionary n.d.). It is exactly this relation between the priority of ‘the right’ and the priority of ‘the good’ as representing two distinct, yet adjacent positions, and there existing a potential for a gradual movement for moral and political theorists to construct theories with more or less qualities of either position, that I have in mind. Think as an example of theories displaying more or fewer degrees of objectivity or degrees of comprehensiveness.

The purpose of introducing this notion of a continuum is to demonstrate that the idea of comprehensiveness or critical distance⁶⁰ is not clear cut. I aim to demonstrate this in Rawls’s theory by arguing that he starts by prioritising ‘the right’, hence justice is derived independently of comprehensive doctrines of ‘the good’ but, at the same time, justice is not independent of all ideas of ‘the good’. Rawls develops a critical distance between justice and morality, but he is still aware of the general goods or the particulars of the society to which this theory of justice applies. On the other hand, the bounds of ‘the right’ are restrictive to the degree that comprehensive goods have to conform to it, meaning that the concept of comprehensive goods within a concept of ‘justice as fairness’ cannot exist unaltered.

⁵⁹ I am indebted to Emma Ruttkamp-Bloem for the suggestion of a continuum as opposed to my initial suggestion of a scale. The idea of a continuum illustrates more clearly the idea of gradual difference between the priority of ‘the right’ and the priority of ‘the good’ as positions in the debate. My reservation in the use of the term scale was the idea of linear progression that does not, I argue, reflect the true nature of the debate.

⁶⁰ Throughout this final chapter I refer explicitly to the interconnected relation between comprehensiveness and critical distance. In Chapter 2, 3 and 4, I made an implicit link between comprehensiveness and critical distance when I discussed Rawls’s criticism of theorists that prioritise ‘the good’. In short, comprehensiveness and critical distance are related in the following manner: The more a theorist relies on a comprehensive conception of ‘the good’ the less critical distance the theorist develops between morality and justice. For instance, communitarians critique theorists such as Rawls for prioritising ‘the right’ insofar as they argue that ‘the right’ should be determined by a particular morality. As such, communitarians critique these theorists for developing a critical distance between justice and morality.

Now, returning to my explanation in Chapter 1, as comprehensive goods have to conform to the bounds set by ‘the right’, I suggest not referring to these goods as being comprehensive doctrines of ‘the good’ but rather *circumscribed* accounts of ‘the good’ insofar as these ideas of ‘the good’ do not exist unrestricted. By using the term *circumscribed* to refer to conceptions of ‘the good’, I imply the idea that the goods that exist within a Rawlsian society are *circumscribed* to the degree that these goods are limited by ‘the right’ and as such are restricted ideas of ‘the good’. Therefore, I use the word *circumscribed* to illustrate this categorical limiting function of ‘the right’ as opposed to the meaning of the term ‘comprehensive’ (as Rawls suggests) which I argue proposes that doctrines of ‘the good’ can exist unaltered. By ‘unaltered’ I mean that the term comprehensive suggests that the doctrines of ‘the good’ themselves do not need to conform to any boundaries. As illustrated in the above chapters, ‘the right’ categorically limits ‘the good’, thus I argue that the use of *circumscribed* in reference to the types of doctrines of ‘the good’ that can exist in a Rawlsian society, illustrates this limiting condition of ‘the right’.

Given this, I mean to demonstrate that Rawls’s concept of society is more prescriptive of ‘the good’ than critics such as MacIntyre and Taylor give him credit for. I argue that Rawls’s ‘justice as fairness’ is not a partial but a predominantly comprehensive theory of justice, as Rawls’s theory of justice prescribes essential personal moral virtues (which will be discussed below). Therefore, I argue his theory can stand up against the critique that his concept of ‘justice as fairness’ has no concept of moral community. The implication of this, is that insofar as any society that is prescriptive of ‘the good’ is exclusive in that it necessarily excludes some forms of ‘the good’ while promoting others, we need to be aware of the danger that in a Rawlsian society certain doctrines of ‘the good’ will flourish, and others will not. Rawls (1996, 197) acknowledges that no society can accommodate for all forms of life or doctrines of ‘the good’, but I argue by looking at this debate in terms of a continuum, we can work out in a more productive manner how theories such as ‘justice as fairness’ could account for as many or as few forms of life or ideas of ‘the good’ as possible.

Rawls’s theory of justice, I argue, is a significant theory of justice because it includes more forms of life or ideas of ‘the good’ than it would exclude, hence the type of society it implies is freer to the degree that persons have more⁶¹ conceptions of ‘the good’/forms of life open to

⁶¹ By more, I do not mean to suggest better, as the use of better provides a qualitative distinction between comprehensive doctrines of ‘the good’. Rather more implies that there is a quantitative increase in how many types of diverging comprehensive goods are able to co-exist within one society.

them than they would have if their justification for their society was reliant on a singular comprehensive moral doctrine.

In order to examine why I argue Rawls's theory of justice is predominantly comprehensive, I will begin this chapter by an overview of what is implied by stating that a theorist prioritises either 'the right' or 'the good'. This overview is a necessary recap for a final evaluation of the priority of 'the right' and the place of 'the good' in 'justice as fairness'. In order to develop this final evaluation, I examine the conditions of justification of 'the right' that Rawls constructs for his theory of justice, such as evaluating the role of his detached hypothetical procedure of justification. Thereafter, I examine the content of 'the right' that is derived from this procedure, such as the principles of justice as well as the content and role of political and primary goods. Having examined both the content and justification of 'the right', I then examine the boundaries of 'the right'. Or, in other words, I examine how 'the right' restricts the acceptable goods within a Rawlsian society. Having analysed the relation between 'the right' and 'the good' in this manner, I then conclude with an exposition as to why I argue Rawls's theory of justice is predominantly comprehensive and not partially comprehensive as he suggests.

5.2 The Priority of 'the Right' vs 'the Good'

In order to fully analyse to what degree Rawls's theory embodies the theoretical structure or the methodological approach of prioritising 'the right', it is necessary to first review what it means to say a moral or political theory prioritises 'the right'.

As outlined in Chapter 1, the debate regarding 'the right' vs 'the good' is a methodological debate concerning how moral and political theories intend to theoretically structure the relationship between justice and morality. In moral and political philosophy when we refer to the theoretical place-holders of 'the right' and 'the good', we mean the following: 'The right' acts as a theoretical construct to refer to that which a theory regards as justice. More generally, it could be used to refer to any action that is seen to be the correct action 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. On the other hand, 'the good' is a theoretical construct used to refer to that which persons considered to be any moral action. For instance, 'the good' can refer to subjective or relative moral actions of persons such as the religious, metaphysical or philosophical doctrines they choose to subscribe to. 'The good' could also refer to a moral

principle that is endorsed by a moral or political theory (Forst 1994 ,1-3 & Sandel 1984, 82-83).

Considering this, a theory that is said to prioritise ‘the right’ is said to develop a moral or political theory that embodies a certain level of objectivity. By objectivity I mean to imply that the content of the moral or political theory is characterised by a critical distance, meaning that what is considered to be right i.e. just, is decided prior to and hence independently of what is considered as ‘the good’ in society. In simpler terms, the idea of justice is not influenced by the subjective desires, final ends or the comprehensive ideas of persons within that society. In this way, a theory that prioritises ‘the right’ is said, I argue, to develop a critical distance between justice and morality, to the degree that what is just is not dependent on what is moral.

Due to this, it is often stated, as Rawls points out, that theorists that prioritise ‘the right’ are said to develop a moral or political theory that relies somewhat on an *a priori* abstract source of reasoning (Rawls 1999, 502-503 & 508-509). An *a priori* abstract source of reasoning, as discussed in Chapter 2 and 3, means to imply that the justification for ‘the right’ is independent of ‘the good’ insofar as the justification is not dependent on an ontological foundation. Rawls, as discussed in Chapter 3, argues that the priority of ‘the right’ is an essential feature of Kantian constructivism. It is precisely this structural feature evident in ‘justice as fairness’ that makes Rawls’s theory of justice a deontological theory and hence resemble certain elements of Kantian moral theory (Rawls 1999, 19-22 & 29).

In contrast to this, 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. And as such, ‘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 1999, 44-45). Due to this, theories that prioritise ‘the good’ are associated with a certain level of subjectivity or particularism, since the foundation of ‘the right’ is contingent on ‘the good’, given that theorists that prioritise ‘the good’ do not develop a critical distance between morality and justice when constructing their theories.

Instead, these theorists critique the possibility of achieving a critical distance between ‘the right’ and ‘the good’ and hence they argue in favour of a necessary dependence between ‘the

right' and 'the good' in moral and political theory.⁶² Therefore, theorists that prioritise 'the good' are critiqued for not developing enough critical distance between 'the right' and 'the good' in their theories (Forst 1994, 2-3). As such, this is one of Rawls's main worries with theories of 'the good', such as utilitarianism, as he argues justice is left hostage to contingencies (Rawls 1999, 25). Therefore, the priority of 'the good' can be said to be characterised on *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 one's ontological orientation.

From the above discussion and in light of the preceding chapters, it should be evident by now how theorists that either prioritise 'the right' or 'the good' stand in direct conflict with one another as they develop opposing arguments of justification. On the one hand, theorists that prioritise 'the right' are criticised by theorists that prioritise 'the good' for developing a critical distance between justice and morality. On the other hand, theorists that prioritise 'the good' are criticised by theorists that prioritise 'the right' for not developing enough of a critical distance between justice and morality. In this way, the debate itself is exhausted because it is at a methodological impasse, as stated before.

It is precisely this methodological impasse between 'the right' and 'the good' that has caused moral and political thinkers to either on the one hand acknowledge the tension within the debate by side stepping the debate itself insofar as they choose not to engage with it as they regard the debate as exhausted⁶³ or on the other hand, some theorists argue for the dismantling of these theoretical constructs all together.⁶⁴ I acknowledge that both of these are viable options or attempts by theorists to move beyond the debate without being weighed down by the debate itself.

With that said, the danger of side stepping or dismantling the debate, I argue, is that we lose a methodological tool in which to analyse moral and political theories. Critics could argue: Why is it necessary to engage in this debate if it offers us a 'stark method' in which to

⁶² Communitarian thinkers such as MacIntyre, Taylor, Sandel and Walzer (as discussed in Chapter 4) argue for a necessary dependence between 'the right' and 'the good', whereby they argue that morality is the constituting factor in determining justice.

⁶³ Refer to the introduction especially pp. 5 in *Liberal Virtues: Citizenship, Virtue and Community in Liberal Constitutionalism* (1991) by S. Macedo

⁶⁴ Refer to Chapter 3 in *Liberalism Community and Culture* (1989) by W. Kymlicka.

contrast moral and political theories and nothing else? By thinking of this debate as a rigid theoretical construct, whereby ‘the right’ and ‘the good’ are two opposing categories is itself problematic. It is problematic, I argue, as on the one hand, it underestimates the complexity of fitting moral and political theories within an inflexible theoretical construct, and, on the other hand, by trying to fit complex theories within a static theoretical structure we miss the nuanced relationship between ‘the right’ and ‘the good’.

These problems arise from the way in which the debate itself has been presented as two distinct polar opposites whereby theorists are categorised into either extreme. This debate, I argue, has been presented as a false dichotomy, *viz.*, as if the priority of ‘the right’ and ‘the good’ are mutually exclusive positions and as such no theorist can develop a theory that embodies aspects of either position at the same time. Hence, I argue that the debate has been constructed so as to force theorists into either one or the other extreme alternative.

In response to this, I propose an alternative option in which to engage with the debate itself so that we may overcome this methodological stalemate associated with this debate. I propose that we acknowledge the debate as not a static but fluid theoretical lens through which to evaluate and compare moral and political theories, as most of moral and political activity actually falls in the area between the two extreme alternatives. What I mean by a ‘fluid’ theoretical lens, is to view ‘the right’ and ‘the good’ as two opposing spectrums on a continuum. ‘The right’ and ‘the good’ are distinct from one another to the degree that theorists that prioritise either ‘the right’ or ‘the good’ can be seen as taking distinct methodological starting points for their theories. This means that theorists that wish to develop a critical distance between justice and morality, are said to prioritise ‘the right’, while theorists that wish to develop a necessary dependence between justice and morality are said to prioritise ‘the good’.

However, we should not understand the priority of ‘the right’ or the priority of ‘the good’ as being fixed theoretical terms. We should rather view them as distinct theoretical terms that vary in gradation. They can vary in gradation in the sense that moral and political theories are characterised by varying features of the priority of ‘the right’ or ‘the good’. Depending on how each theorist constructs their theory and gives content and conditions of justification and realisation to ‘the right’ and ‘the good’, that theorist will develop a theory that features varying degrees of prioritising of ‘the right’ and ‘the good’.

The point is that we currently conceptualise the priority of ‘the right’ as a static feature that certain types of moral and political theories share to the same degree. Understanding the priority of ‘the right’ or ‘the good’ in terms of this static dualism, places us as mentioned above, in a danger of reductionism and in a futile debate. But, if we are to re-problematise the debate in terms of ranges of embodying more or less qualities associated with either the priority of ‘the right’ or ‘the good’, then we acknowledge that there is room for movement in terms of how each moral and political theory is constructed and categorised as embodying more or fewer characteristics of either the priority of ‘the right’ or ‘the good’.

For instance, 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, degrees of comprehensiveness from partially to predominantly to completely comprehensiveness,⁶⁵ degrees of *a priori* reasoning and hence degrees of developing a critical distance, rather than labelling a theory with these static terms. In contrast to this, when we argue that a theorist prioritises ‘the good’, we identify a moral and political theory with degrees of particularism, degrees of comprehensiveness, degrees of *a posteriori* reasoning and hence degrees of subjectivist and relativist reasoning rather than objectivist reasoning. Thus the purpose of thinking of the priority of ‘the right’ or ‘the good’ as being more or less a quality of something, is to show that the idea of comprehensiveness or critical distance associated with the priority of ‘the right’ is not uniform.

For instance, Kant and Rawls develop moral and political theories that are said to prioritise ‘the right’, however the idea of objective reasoning is fundamentally different in each theory. For Kant objectivity in his theory refers to reasoning about principles of morality from an absolute position of detachment. Whereas, for Rawls on the other hand, objectivity implies reasoning about principles of justice from universal assumptions of a particular historical tradition. In other words, Rawls’s political theory is less objective than Kant’s moral theory insofar as Rawls’s political theory, although objective, is still grounded in a particular social tradition. Therefore, although Rawls and Kant both construct their theories to prioritise ‘the right’, these theories are significantly different in terms of the level or the degree of critical distance they develop.

⁶⁵ Once again, further on in this chapter, I solidify my argument as to why Rawls’s theory of justice is neither partially nor fully comprehensive but rather predominantly comprehensive. Predominantly comprehensive being a degree more than partially comprehensive but still lower than fully comprehensive in terms of the continuum.

Thinking of the priority of ‘the right’ or ‘the good’ as being a range, a continuum, and not a specific position, enables us to answer questions such as these: At what point does a theory that on the one hand, prioritises ‘the right’ develop a more or less critical distance between justice and morality by relying more or less on a moral theory to give content to the question of justice? It is at this point that we should turn to Rawls’s theory of justice, as I argue, that by analysing the complementary yet complex relationship Rawls develops between ‘the right’ and ‘the good’ we are able to analyse to what degree Rawls’s theory of justice prioritises ‘the right’ as well as to what degree ‘justice as fairness’ incorporates ideas of ‘the good’. In other words, we are now ready to develop a better understanding of why I argue Rawls’s ‘justice as fairness’ is predominantly comprehensive.

5.3 The Priority of ‘the Right’ in ‘Justice as Fairness’

5.3.1 The Conditions of Justification of ‘the Right’

Let us now turn to how Rawls relates and gives the content and conditions of justification and realisation to ‘the right’ within ‘justice as fairness’ and thus again consider why Rawls prioritises ‘the right’. As often pointed out in the above, Rawls states that a necessary condition of modern democratic society is that it is marked by moral pluralism and as such any moral and political theory for a modern democratic society must consider plural conceptions of ‘the good’ (Rawls 1988, 267). This means that a political theory for a modern democratic society must be constructed in such a way as to mediate the co-existence of multiple conflicting comprehensive goods. Hence the comprehensive conceptions of ‘the good’ (its contents and conditions of realisation), according to Rawls, should not be prescribed to persons by the basic institutions of society (Rawls 1987, 4 & Rawls 2001, 84). In other words, society should not be structured in such a way that its foundation of justification is based on one or only certain comprehensive doctrines of ‘the good’. In this way a modern democratic society respects the freedom of moral persons to the degree that it respects persons’ right to liberty of conscience, namely, the freedom persons have to choose, develop, construct and carry out or actualise their own desires, life plans and final ends.

Therefore, Rawls views it necessary to develop a theory of justice independently of moral particulars (i.e. comprehensive doctrines of ‘the good’) while, at the same time, constructing a theory of justice in such a way as to allow as many forms of ‘the good’ as possible (Rawls 1999, 21-22). His solution (namely ‘justice as fairness’) 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 from, yet mediates, the plural conceptions of 'the good' individually chosen within society. Thus 'the right' establishes the just conditions in which one can then in the private 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 (ibid., 394).

How does Rawls develop a theory of justice independently of 'the good' so to speak? As discussed in detail in Chapter 2, he achieves this by developing an abstract process of reasoning in which to evaluate principles of justice. As we know by now, this abstract process of reasoning, Rawls (1999, 104), calls the original position, and the veil of ignorance is the methodological tool Rawls uses to develop critical distance between 'the right' and 'the good'. In this way the justification for the content of the principles of justice is not based on the particular comprehensive doctrines of persons within society. Hence, Rawls argues, 'justice as fairness' makes no truth claims regarding comprehensive ideas of 'the good' (Rawls 1996, 129).

Due to this, Rawls states that his theory is neutral in aim or rather that his theory develops neutral ground for the justification of 'the right' (ibid., 192). Rawls characterises 'justice as fairness' as neutral in that his theory of justice can be upheld by all citizens independently of the comprehensive doctrines that they subscribe too. In this way, Rawls states that his idea of neutral ground is neutral precisely because it invokes the idea of developing a common ground that does not outright promote any comprehensive doctrines from the start (ibid., 193).

Because of this, I argue that 'the right', specifically its conditions of justification, is characterised by a level of objectivity in that the method of justification for 'the right' embodies a quality of *a priori* reasoning, insofar as the conditions of justification of 'the right' are developed independently of 'the good'. Thus, insofar as Rawls does not invoke or use the metaphysical or philosophical truth claims of specific comprehensive doctrines to try and justify 'the right', the justification is independent of persons' specific comprehensive doctrines of 'the good'. In this way, I argue Rawls does develop a theory of justice that tries to be impartial concerning 'the good', to the extent that he tries to develop a theory of justice that can incorporate as many conflicting comprehensive accounts of 'the good' without his theory of justice itself promoting or prescribing any one of the co-existing comprehensive doctrine themselves.

Therefore, I argue since Rawls characterises ‘the right’ with qualities of objectivity, *a priori* and impartiality, ‘the right’ (and specifically its conditions of justification) does embody a certain universalistic element (Rawls 1999, 508-510). ‘The right’ embodies the qualities of universality in that it acts as a neutral or common position that all persons can adopt regardless of their comprehensive doctrines of ‘the good’. Hence ‘the right’ acts as a universal point of reference for all persons living in a society marked by moral pluralism, as they can all agree to uphold the principles of ‘the right’ even if they do not agree on what is moral.

Given this, I argue that Rawls starts from the methodological position of prioritising ‘the right’ over ‘the good’ to be able to develop a level of critical distance between ‘the right’ and ‘the good’. By this, I mean to suggest that Rawls wants the justification for ‘the right’ to not rely on the comprehensive doctrines of ‘the good’. This is important for Rawls as, on the one hand, he is working out a theory of justice for a society characterised by moral pluralism and secondly, he is aware of the dangers of justifying ‘the right’ from ‘the good’, i.e. ‘the right’ would be held to the contingency of ‘the good’.⁶⁶

In describing ‘the right’, in the above paragraphs I have used phrases such as ‘levels of objectivity’, ‘qualities of *a priori* reasoning’ and ‘universalistic elements’ as well as I stated that Rawls tries to be impartial concerning ‘the good’. I have also made a distinction between ‘the right’ in terms of its content and conditions of justification. I have deliberately chosen to express the conditions of justification (not the content) of ‘the right’ as embodying degrees of objectivity, of impartiality and *a priori*.

If I were to say that ‘the right’ in its entirety is objective, universal and impartial; this would imply that ‘the right’, in the sense of both its content and conditions of justification, embodies universal detachment in that ‘the right’ is independent of all circumstances and hence does not rely on empirical evidence for its content nor its justification. This makes possible an interpretation of ‘justice as fairness’ as a theory of justice which is applicable to any society regardless of the empirical particulars of that society itself. This previous statement is *untrue* however, as Rawls *does not* develop a theory of justice that is universal in application or content. He specifically states that ‘justice as fairness’ does not presuppose comprehensive doctrines but rather relies on “latent public ideals in [the] political culture of a democratic

⁶⁶ Refer to Chapter 3 for a full discussion of this critique of the contingency of justice and its associated with the priority of ‘the good’.

society for its justification” (Rawls 1996, 175). Hence Rawls develops a theory of justice for a particular society that is characterised by a particular historical tradition (ibid., 82).

Therefore, without using the qualifier ‘degrees of’ and distinguishing between the conditions of justification vs. the content of ‘the right’, using the terms ‘universal’, ‘objective’ and ‘*a priori*’ is actually misleading as these terms do not convey or demonstrate the true complexity of the relationship between ‘the right’ and ‘the good’ Rawls develops in ‘justice as fairness’. It is for this reason that I argue above in terms of suggesting a continuum for moral and political theories as analysing the debate between ‘the right’ and ‘the good’ in terms of ‘degrees of’ is the only way in which to effectively illustrate and understand the true nature of the debate itself. Hence, as stated in the previous section, I suggest that we view the priority of ‘the right’ or ‘the good’ as methodological *starting points* rather than as static methodological *positions*. If we view ‘the right’ in Rawls’s theory as having two distinct but interrelated components namely, the content of ‘the right’ and the conditions of justifications for ‘the right’, then we can see how the priority of ‘the right’ as a methodological starting point functions in detail in his theory.

Rawls throughout his early and late works keeps the same theoretical structure for his theory of justice. By this I mean to infer that he first addresses the conditions of justification for ‘the right’, then he address the content of ‘the right’, and lastly the ideas of ‘the good’ that can co-exist within ‘justice as fairness’. Firstly, as discussed above, Rawls desires to develop ‘the right’ on a solid foundation. Rawls states that “moral objectivity is to be understood in terms of a suitably constructed social point of view that all can accept.” (Rawls 1980, 519). This means that he intends ‘the right’ to act as an Archimedean point to the degree that it acts as the stable feature within a society that is characterised by fluctuating goods. ‘The right’, I argue, in fact acts as an Archimedean point to the degree that it acts as a universal relative point, meaning that ‘the right’ acts as a universal point of stability that is characterised by the content of the historical tradition of that society.

In other words, Rawls starts from the methodological point of prioritising ‘the right’ insofar as he chooses to construct a theory of justice whereby the conditions of justification for ‘the right’ express (to an extent) the ideals of objectivity, universality and *a priori*. Rawls expresses these ideals in the conditions of justification for ‘the right’ to the degree that he constructs the original position with certain universal assumptions. The first of these ideals is the ‘sense of justice’ or what Rawls also refers to as the condition of reasonability. Rawls

constructs the original position with the assumption that all persons have the ability to construct, choose and carry out principles of justice (Rawls 1996, 49). Secondly, Rawls assumes, in the construction of the original position, that all persons have the ability to act rationally insofar as they have the ability to construct, choose and carry out their own ideas of 'the good' (Rawls 2001, 19). Given this, Rawls constructs the original position with the assumption that all persons are considered free and equal (ibid., 2001).

Rawls constructs the original position with the universal assumption that all persons are free insofar as they are the sole authority of their chosen good, hence they are free to adjust their conception of 'the good' so that they align their good with what they can actually pursue within their society. Therefore, citizens are responsible for how both their good and the ends it entails as well as their claims of justice are to be assessed by others (Rawls 1985, 243). Similarly, citizens are universally considered equal to the degree that all persons share (more or less) the same moral powers, but secondly, persons share these moral powers to the same degree. This approach enables citizens to view themselves as having political equality to the degree that they, as citizens all have equal ability for social cooperation (Rawls 2001, 20).

I refer to these assumptions as 'universal', as Rawls assumes that all persons share these qualities (Rawls 1985, 243-244 & Rawls 2001, 20-23). Inasmuch as all persons share these qualities, these assumptions are objective, to the degree that persons possess these qualities regardless of the contingencies of their life. Hence, when theorising about justice, I argue, Rawls reasons from *degrees* of universality to *degrees* of particularity insofar as he constructs a *universally relative* position of justification from which to assess the particular content of 'the right' i.e. the principles of justice. Due to this, the principles of justice are developed in the image of these universal assumptions and, as a result, freedom, equality, the sense of justice and the capacity for 'the good' are not products of the principles of justice themselves, but rather the principles of justice is the content of 'the right' that actualises these universal ideals in society.

I refer to these assumptions as ideals as it is important to note that Rawls explicitly states that 'justice as fairness' is not developed from a neutral procedure (Rawls 1996, 192). Rawls argues that this procedure is substantive as it expresses certain values. Therefore, when I state that the conditions of justification of 'the right' are framed by certain universal assumptions I am not claiming that these are impartial assumptions, in that they do not make value

judgements or invoke a certain view of the human being as this is precisely what they in fact do.

Therefore, I argue that by viewing the priority of ‘the right’ as a methodological starting point one can see that Rawls manages to keep a certain level of critical distance by moving from degrees of universality to degrees of particularity. Rawls in prioritising the question of justice, prioritises, if you want, or chooses to settle first, the conditions of justification for ‘the right’. In this way, he prioritises the conditions of justification for ‘the right’ over the content of ‘the right’. Hence, he develops the conditions of justification for ‘the right’ as having more qualities of universality, objectivity and *apriority* than the content of ‘the right’ has. Why is the content of ‘the right’ not as objective as the theoretical procedure of justification? I argue it is because the content of ‘the right’ is grounded on one relative assumption, the fact of moral pluralism. Moral pluralism is a relative assumption, precisely because Rawls argues that it is a particular historical feature of society stemming from the liberal tradition that underpins current modern democratic societies (Rawls 1988, 267). Let us now turn to the content of ‘the right’ to analyse how Rawls moves from degrees of universality to degrees of particularity when characterising ‘the right’.

5.3.2 The Content of ‘the Right’

In the previous section I discussed why ‘justice as fairness’ according to Rawls is neutral in aim but not neutral in procedure. I will now explain why Rawls argues that ‘justice as fairness’ is also not neutral in content. In the previous section I alluded to the idea of why ‘the right’ is not neutral in content, when I stated that Rawls is developing a theory of justice for a society that has a specific historical tradition. As such, the content of ‘the right’ must embody the underlying values of that society to which it applies (Rawls 1996, 192). How does Rawls construct the content of ‘the right’ to embody certain societal values without invoking certain comprehensive conceptions of ‘the good’? He does this via his method of reflective equilibrium.

Rawls’s method of reflective equilibrium is a method of justification for the content of ‘the right’. I have chosen to mention this condition of justification here and not in the previous section, because the method of reflective equilibrium embodies more qualities of particularity than of objectivity but allow me to clarify. As explained in Chapter 2, Rawls uses the method of (wide as opposed to narrow) reflective equilibrium to identify the moral sentiments of persons within a modern democratic society (Rawls 1999, 18, 104 & Rawls 2001, 31). He

does so in order to align these moral sentiments with one another so that it becomes possible to identify a shared ‘fixed considered judgment of justice’ that all persons of a modern democratic society share (Rawls 2001, 31). In other words, this method of reflective equilibrium acts as a process of deliberation through which to align our intuitive moral ideas with what we would regard as acceptable or reasonable principles of justice. The ‘fixed point of our considered judgments of justice’, Rawls identifies as liberty of conscience (Rawls 1999, 181 & 187).

To recap from Chapter 2, liberty of conscience exemplifies the relativistic ideals of a modern democratic society, namely that of moral pluralism, to the degree that it embodies the moral sentiment that persons have the freedom to construct and follow their own conception of ‘the good’. 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’ (ibid.). Due to liberty of conscience being a shared moral value, this value itself, I argue, could be given a neutral status insofar as people appeal to this value without invoking the truth claims of their comprehensive doctrines. Therefore, I argue that liberty of conscience is a relative value but has universal application if we understand ‘universal’ to be confined to the bounds of a particular domestic society.

Therefore, I would not characterise this method of reflective equilibrium itself as an objective, universal or as an *a priori* 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 the societal contingencies – such as the relative assumption of moral pluralism – and less on universal assumptions of the view of the person. However, there is a level of objectivity or universality associated with the method of reflective equilibrium as it identifies the common moral value necessary to ground the two principles of justice. This common moral value is liberty of conscience.

Liberty of conscience provides the moral support necessary for persons of a modern democratic society to uphold the principles of justice. I have argued in favour of liberty of conscience being a relative political moral value that has an objective status to the degree that it has universal scope within a modern democratic society. I have added the qualifier of ‘political’ in reference to liberty of conscience, as Rawls uses the notion of the political to demarcate those moral values that are general in content and application (Rawls 2001, 199). In relation to this, the two principles of justice are political principles that are relative in

content but are general in application and as such they have an objective status in society to the degree that all persons must categorically uphold these principles.

As stated previously, these principles are, firstly, the liberty principle, which ensures that all persons are entitled to equal basic rights and freedoms (Rawls 1982, 5). The first part of the second principle states that society should be structured in such a way as to actualise these above theoretical rights for all persons by ensuring that all positions and opportunities in society are equally available and freely open to all persons (*ibid.*). The second part of the second principle, namely the difference principle states that society may be structured in an unequal manner if and only if these inequalities benefit the least well off in society (Rawls 2001, 58-59). What is important to note is that the universal assumptions embedded in the *conditions of justification* for ‘the right’ that I mentioned earlier, come to fruition in the *content* of ‘the right’. One can see this in the fact that the principles of justice embody the universal assumptions of freedom, equality and solidarity of persons. Therefore, as Rawls (1996, 191-192) notes, the content of ‘the right’ is not substantively neutral as the content of ‘the right’ is specific, meaning that the two principles of justice are prescriptive to the degree that they delineate what is morally acceptable within society. Or, as Rawls states, “[i]n justice as fairness the priority of the right means that the principles of political justice impose limits on permissible ways of life” (Rawls 1996, 174).

Considering this, one can see the complexity of what it means when Rawls states that ‘justice as fairness’ prioritises ‘the right’. In constructing an answer as to what a just society is, he relies on both universalistic and particularistic elements for the justification and the content of ‘the right’. Due to this, one can see that, although Rawls prioritises ‘the right’ – i.e. develops a critical distance between justice and morality – the content of justice is grounded in just enough of a moral setting to give it normative force for a particular society. Therefore, it would be a mistake to understand the priority of ‘the right’ as implying that Rawls develops a theory of justice that does not rely on any moral ideas. This is what Rawls means when he states that ‘the right’ and ‘the good’ are complementary, a moral and political theory cannot depend on only one of the two theoretical concepts, they are forever intertwined (*ibid.*, 173).

In light of the methodological tension between the priority of ‘the right’ vs. ‘the good’, and the fact that Rawls argues justice and morality are complementary and as such no moral or political theory can neglect either concept, I would argue that this methodological tension is implicit in his early works, when he acknowledges that the content of justice (i.e. ‘the right’)

is the essential moral virtues (i.e. ‘the good’) of a society. Rawls, I argue, acknowledges this tension in the very first opening line of *A Theory of Justice*, when he states: “Justice is the first virtue of social institutions as truth is of systems of thought” (Rawls 1999, 3). This is what I am trying to convey with my notion of a continuum, introduced above in the previous sections. It is important to analyse how one relates ‘the right’ and ‘the good’.

Rawls explicitly 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” (ibid., 203). In other words, ‘the right’ is determined prior to and independently of ‘the good’; and, in this way, ‘the good’ then is subordinated to and confined within the limits set by ‘the right’ (ibid., 21-22). With that said, we must now analyse just how prescriptive ‘the right’ is, to analyse why I argue Rawls’s ‘justice as fairness’ is not partially but rather predominantly comprehensive. We can do this by taking a closer look at the space the priority of ‘the right’ allows for ideas of ‘the good’.

5.4 Ideas of ‘the Good’ in ‘Justice as Fairness’

Rawls, in his later works and more specifically in *Political Liberalism*⁶⁷, continues to refine what he meant when he stated that ‘justice as fairness’ prioritises ‘the right’. In his later works Rawls acknowledges that some essential explanations regarding the relation between ‘the right’ and ‘the good’ were missing from his earlier works, such as *A Theory of Justice*. It is due to this initial oversight by Rawls that, one could argue, lead to many thinkers critiquing Rawls for neglecting the place of ‘the good’ in society and hence creating the impression that he constructs a society without a moral community. In the previous chapter we discussed both this critique as well as how Rawls rectified his oversight in his later works by introducing the idea of an overlapping consensus, the notion of public justification and narrowing the scope of his theory to the political. In order to analyse which ideas of ‘the good’ are permissible in ‘justice as fairness’, let me start by addressing the content and scope of the two types or categories of ‘the good’ present in Rawls’s theory of justice.

⁶⁷ Also, in the following articles by Rawls (1988) ‘The Priority of the Right and Ideas of the Good’ and ‘Kantian Constructivism in Moral Theory’ (1980).

As discussed earlier in reference to liberty of conscience, I referred to it as a political good as it is a common moral value shared by all citizens of a modern democratic society and as such it becomes the moral foundation for the basic structure of society and part of the content for the justification of 'the right'. One could say that Rawls distinguishes between two types of goods, namely political goods and comprehensive ideas of 'the good' and their associated method of reasoning namely, non-public and public reason (Rawls 1996, 220-224). These two categories of goods can be distinguished from one another in terms of their content, their scope and their conditions for realisation.⁶⁸

The content of political goods is moral, while their scope is political; that is why we refer to them as political goods (Rawls 1999, 361). This means that these political goods do carry a moral weight insofar as they prescribe to a certain degree moral values, but this prescription is general in application. In other words, the scope of influence of these types of goods is the entire society and hence they influence both the political and non-political (or private) spheres of society. Moreover, the content of political goods, I would say is morally general, in that the moral values that are prescribed by political goods are general enough to not conflict with a citizen's comprehensive ideas of 'the good'. Liberty of conscience is a general political good, insofar as it is a shared common moral value that all persons endorse regardless of the comprehensive ideas of 'the good' that they subscribe to.

'Primary goods' is another type of general political good. To recap, 'primary goods' is the terminology Rawls gives to denote the basic resources that all citizens living in a modern democratic society need regardless of their comprehensive doctrines they subscribe to (Rawls 1996, 187). In other words, the notion of 'primary goods' is Rawls's solution to the problem of the distribution of heterogeneous goods within a society marked by moral pluralism. There are seven (5 of which are essential) 'primary goods' in total, one example for instance is the free and equal access to pursue wealth (Rawls 1988, 257 & Rawls 2001, 58-59) (refer to Chapter 2, Section 2.7.1 for a more comprehensive explanation). What is important to note is that the content of primary goods and liberty of conscience, insofar as they are both political goods, they are necessarily intertwined with the content of 'the right', since the conditions of

⁶⁸ In discussing 'the right' I referred to the content of and the necessary conditions for justification. When I refer to 'the good', I refer to the content of and the necessary conditions of realisation. I specifically refer to the conditions of 'the good' as being conditions of realisation and not justification, as 'the good' does not have to be publicly justified. Yet 'the good' can only be realised under certain conditions or constraints which is set by 'the right', in a Rawlsian society.

justification for political goods is derived from the conditions of justification for ‘the right’. In this way, I argue, ‘primary goods’, just like liberty of conscience, embody relative moral values that have an objective status to the degree that these goods are necessary for all citizens.

Rawls in *Political Liberalism* (1996, 181) claims “... the thought behind the introduction of primary goods is to find a practicable public basis of interpersonal comparisons based on objective features of citizens’ social circumstances open to view”. Insofar as Rawls was analysing “the objective features of citizens” (ibid.) so to speak, he referred to these as political goods in his later works, while in his earlier works he referred to them as reflecting the ‘thin theory of the good’ (Rawls 1988, 254 & Rawls 2001,14).

In light of this discussion of ‘primary goods’ specifically and political goods in general, I reinforce my argument that the priority of ‘the right’ relies on both universalistic and particularistic qualities in terms of the content, scope and justification of ‘the right’. It is universal in scope and justification but particular in content. The boundaries of ‘the right’ include within them the ‘fixed considered judgments of justice’ and political ideas of ‘the good’. Due to this, I refer to political goods as having to be justified or as having conditions of justification of ‘the right’; this is because political goods give normative content to the question of justice in ‘justice as fairness’. Therefore, political goods apply to the basic structure of society.

In contrast to this, the other type of goods that can exist in ‘justice is fairness’ are what Rawls refers to as, non-political (private) or comprehensive ideas of ‘the good’.⁶⁹ The content of comprehensive ideas of ‘the good’ is moral but their scope is non-political, implying that the scope of influence of comprehensive goods is bound to the private sphere of society. It is in this way, I argue, that the content and scope of comprehensive ideas of ‘the good’ are not general but specific. Comprehensive doctrines of ‘the good’ are specific in content in that they carry more normative weight than political ideas of ‘the good’. What I mean by this is that principles of justice and political ideas of ‘the good’ endorse an idea of moral

⁶⁹ As I have mentioned throughout this dissertation when I mention comprehensive ideas of ‘the good’ I am using Rawlsian terminology to illustrate the types of goods he thinks are acceptable in a society structured by ‘justice as fairness’. It is important to note this terminology here again, as I refer to Rawls’s use of comprehensive often throughout this section and the following sections of Chapter 5 in order to clarify Rawls’s use of comprehensive in relation to acceptable ideas of ‘the good’ before I introduce my terminology later on in this chapter.

reasonability whereas comprehensive doctrines of 'the good' uphold certain moral truths as their basis for justification. Because of this, comprehensive doctrines of 'the good' will naturally be in conflict with one another as their alternative moral truth claims conflict with one another. Therefore, comprehensive ideas of 'the good' are specific in scope insofar as they only apply to the private sphere of society. In other words, comprehensive doctrines do not have public influence like the principle of justice do, as they do not apply to the basic structure of society.

It is because of this, that when Rawls refers to comprehensive ideas of 'the good' that exist in 'justice as fairness', it seems as if he is neutral concerning which comprehensive ideas of 'the good' can exist. By 'neutral' I mean it seems as if 'justice as fairness' can impartially mediate the co-existence of multiple conflicting comprehensive doctrines, as 'justice as fairness' itself makes no antecedent claims of moral truth. In other words, at first it appears as if Rawls's theory of justice does not judge which comprehensive ideas of 'the good' are acceptable as 'justice as fairness' endorses no moral truth against which to judge them.

However, by now we are aware that Rawls does give a condition for 'the good', which is the priority of 'the right'. The implication of this priority is that the doctrines of 'the good' that are permissible are those that conform to bounds set by 'the right'. Due to this, one could say that the priority of 'the right' gives the conditions of realisation for 'the good', meaning, 'the right' demarcates the conditions under which comprehensive ideas of 'the good' can be actualised.

Rawls's concepts of the 'overlapping consensus' and the 'social union of social unions' demonstrate how the priority of 'the right' develops the conditions of realisation of 'the good'. As we know the content of 'the right', i.e. the principles of justice, are shared by all persons even though these citizens do not support the same comprehensive ideas of 'the good' (Rawls 1987, 1). Due to this, persons all share the same political conception of justice, meaning they all share in the same understanding of, or have come to agreement on, what they consider to be morally reasonable, given that their society is marked by moral pluralism. Citizens affirm the content of 'the right' for different reasons, which is influenced by the comprehensive ideas of 'the good' that they subscribe too (Rawls 1996, 129).

For Rawls, what matters is that their comprehensive conceptions of 'the good' allow them to affirm 'the right' (ibid., 197), meaning that as long as there is a moral overlap between their comprehensive doctrines and the principles of justice, those goods are acceptable in society.

This moral overlap enables ‘justice as fairness’ to develop a moral community as all citizens endorse the same political moral values. Rawls states that ‘justice as fairness’ does not abandon the idea of a moral community that is grounded on one comprehensive moral value system or truth claim (ibid., 201). However, ‘justice as fairness’ can create a stable moral society insofar as all citizens can agree, and hence endorse, what they regard as morally reasonable.

Similarly, if one’s comprehensive conception of ‘the good’ does not align with the principles of justice, then Rawls would regard that comprehensive conception of ‘the good’ as unreasonable for a society portrayed by ‘justice as fairness’ to endorse.⁷⁰ Rawls, in his later works, added the demarcation of reasonability as a condition for acceptable ‘comprehensive’ ideas of ‘the good’ that can co-exist in a Rawlsian society to illustrate more clearly that ‘justice as fairness’ cannot accommodate all forms of life (ibid., xviii & 94). Because of this, Rawls had to add the condition of reasonability to the idea of moral pluralism in order to make clear that ‘justice as fairness’ cannot be thought of as allowing any and all types of what he refers to as ‘comprehensive’ ideas of ‘the good’.

Given this, the priority of ‘the right’ does more than just give the conditions for the realisation of ideas of ‘the good’. It also gives the conditions of justification for (as Rawls calls them) comprehensive ideas of ‘the good’, even though this justification does not rely on or appeal to moral truth. It is because of this that I would argue that Rawls’s theory of justice does not impartially mediate comprehensive ideas of ‘the good’. Rawls, in fact, even in his early works such as in his article ‘Fairness to Goodness’ implicitly acknowledges that ‘justice as fairness’ cannot impartially mediate comprehensive ideas of ‘the good’ when he states:

“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

⁷⁰ It is important to note, that there could be multiple different versions or interpretations of the same ‘comprehensive good’ in a society. In relation to the example of Islamic fundamentalism in Section 2.9.1 of this dissertation and the example of Christianity in the following section, there can be variants of both Christianity and Islam as comprehensive doctrines. However, the radicalised versions of either comprehensive doctrine will not be acceptable to Rawls, but the moderate or ‘reasonable’ or more specifically the liberal versions will. The supporters of the radical or ‘unreasonable’ interpretations of these doctrines can remain in a Rawlsian society if and only if they denounce these radicalised or unreasonable elements of their interpretation of a comprehensive doctrine, as it is these unreasonable elements that violate the principles of justice.

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” (1975, 554).

Therefore, Rawls acknowledges that he cannot be neutral concerning ‘the good’, meaning that there are certain forms of life that cannot be endorsed by the citizens of ‘justice as fairness’. If ‘justice as fairness’ cannot endorse all forms of life then does that imply that Rawls’s theory of justice does not develop enough of a critical distance between justice, i.e. ‘the right’ and morality i.e. ‘the good’? If he does not develop enough of a critical distance between justice and morality, is he open to the same critique he raised against theorists that prioritise ‘the good’? Does this then imply that Rawls develops a comprehensive doctrine after all? To answer these questions, we need to consider which so called comprehensive ideas of ‘the good’ are not permissible in a Rawlsian society.

5.5. How Comprehensive is Rawls’s ‘Justice as Fairness’?

As discussed above, we know that permissible (as Rawls states) comprehensive goods are any goods that conform to the bounds set by ‘the right’. In other words, if comprehensive goods can endorse the principles of justice then those goods are permissible in ‘justice as fairness’. Hence, if comprehensive ideas of ‘the good’ cannot fit within bounds set by ‘the right’ they are not permissible in a Rawlsian society. This seems straight forward but let us look more closely at which so called ‘comprehensive’ goods would not be allowed and why, and the implications of this for Rawls’s theory of justice.

Rawls in *Political Liberalism* (1996, 196), gives two reasons as to why ‘justice as fairness’ would “discourage certain conceptions of the good” (ibid.). The first reason he offers, is that some goods could conflict with the principles of justice. In this case, Rawls gives the example of slavery. The second reason he gives, is that certain comprehensive conception of ‘the good’ would not gain support in a society such as ‘justice as fairness’ (ibid.).

The first reason mentioned above is, I argue, an explicit demarcation in ‘justice as fairness’. What I mean by this is that the priority of ‘the right’ necessarily entails that if any conception of ‘the good’ does not fit within the bounds of ‘the right’, meaning if it goes against the principles of justice, then this conception of ‘the good’ would not be allowed. Specifically, any doctrines of ‘the good’ that undermine the freedom and equality of persons would not be accepted. For instance, comprehensive doctrines of ‘the good’ that are built on a moral premise of racial superiority, ethnic hatred or encourages gender violence would not be

accepted as these comprehensive doctrines of ‘the good’ undermine the freedom and equality of all persons in society.

This is precisely what Rawls implies when he states that ‘justice as fairness’ is fair to persons and not fair to ‘comprehensive’ doctrines of ‘the good’ (Rawls 1975, 554). The implication of this is that the priority of ‘the right’ does not necessarily imply the equal treatment of all comprehensive doctrines of ‘the good’. Rather the priority of ‘the right’ implies that insofar as we assume (start from the premise) that all persons are free and equal, and we develop a society in the image of and hence, with respect for, these universal relative assumptions, we must allow persons the freedom and equality to pursue their comprehensive doctrines so long as they do not violate these fundamental assumptions themselves.

The second reason Rawls gives for why certain goods would be discouraged by the theory ‘justice as fairness’, *viz.*, certain comprehensive doctrines of ‘the good’ would not gain support in such a society, I argue, involves both an explicit and implicit demarcation for so called comprehensive doctrines of ‘the good’. Let me explain what I mean by this. The fact that a Rawlsian society would not encourage citizens to support certain comprehensive doctrine(s) of ‘the good’ that do not embody the principle of justice and their fundamental assumptions is explicit in terms of our discussion. Implicit in this statement is the idea of what a Rawlsian society is encouraging its citizens to support.

A Rawlsian society encourages its citizens to buy into the universal/foundational assumptions that are grounded in the priority of ‘the right’. In other words, a Rawlsian society encourages its citizens to uphold and respect the moral values of freedom, equality, liberty of conscience, toleration etc. Rawls acknowledges this in *Political Liberalism* when he states, ‘justice as fairness’ “... affirms the superiority of certain forms of moral character and encourages certain moral virtues” (Rawls 1996, 193). In other words, ‘justice as fairness’ influences citizens’ thinking in terms of what they think constitutes a good society, i.e. it influences what citizens think constitutes good moral character and influences them as to what ‘comprehensive’ ideas of ‘the good’ they can and cannot have. Hence, ‘justice as fairness’ seems to prescribe and instil within its citizens a very specific account of ‘the good’.

Is this specific account of ‘the good’ a comprehensive account of ‘the good’ as Rawls suggests? To recap, Rawls defines a doctrine as comprehensive when it includes conceptions of what is of value in human life (*ibid.*, 13 & 175). A fully comprehensive doctrine prescribes to persons certain values, virtues and ideals which influence every aspect of that person’s life

(ibid.). On the other hand, a partially comprehensive doctrine prescribes certain values, virtues and ideals that only influence part of their life, but these values do not exhaust all aspects of their life (ibid.). An important characteristic to note, according to Rawls, is that for a doctrine to be considered partially comprehensive its sphere of influence must extend beyond the realm of the political, hence it must prescribe non-political ideals (ibid.).

Let us look at the political virtue of toleration that 'justice as fairness' prescribes. The virtue of toleration although it is a political virtue, does prescribe a citizen's personal virtue to the degree that persons must live by this virtue in a Rawlsian society. In other words, if citizens subscribe to (what Rawls would call) a comprehensive doctrine that is founded on the moral claim that their religion is the only religion that should exist in society (i.e. religious supremacy), then their comprehensive doctrine goes against the political virtue of toleration. And we know by now that if a person's comprehensive doctrine does not uphold these virtues or political principles then one cannot endorse this comprehensive doctrine in a Rawlsian society.

Allow me to take this example of the virtue of toleration one step further. If all persons in a Rawlsian society must uphold the moral value of toleration in all aspects of their lives, then would parents be able to raise their children (in the privacy of their own home) in line with a singular comprehensive doctrine of 'the good' such as, say Christianity? I would argue no. If parents were to raise their children with only one specific comprehensive moral doctrine, then that itself would undermine the moral virtue of toleration all citizens must uphold. Granted in a household setting the relationship between a parent and child is defined precisely by these relations, however in the wider scheme of society both the parent and child are citizens. Insofar as they are citizens, no citizen can enforce or strictly encourage other citizens to affirm one specific comprehensive doctrine of 'the good'. Rather in a Rawlsian society parents would have to encourage and educate their children of the diverse possible religious doctrines (for example) that they could affirm. In other words, parents will have to create a lifestyle in their children's home life that fosters the moral virtues of society such as toleration and liberty of conscience and not foster the moral values of their own (parents) comprehensive doctrine they subscribe too. Therefore, although 'justice as fairness' does not outright make moral truth claims about personal virtues and what is of value to human life, the political (moral) values it endorses end up delineating what are acceptable and unacceptable personal virtues and what is and is not of value to human life.

Rawls argues that although ‘justice as fairness’ adopts these moral values such as toleration⁷¹, it does not lead to ‘justice as fairness’ being characterised as a comprehensive theory of justice, but rather only a partially comprehensive theory of justice⁷² (Rawls 1996, 194). According to Rawls, his theory of justice is a partially comprehensive doctrine, because even though it does prescribe moral values, his theory of justice does not make antecedent moral truth claims (ibid., 194). Hence in a Rawlsian society, moral reasonability as a demarcation for what are acceptable ideas of ‘the good’, may exhaust and promote some or other moral virtues, personal values, views of human life, but it does not favour one specific moral truth all together.

Due to this, I acknowledge and hence argue that a theory of justice such as ‘justice as fairness’ is less comprehensive than a theory of justice that endorses one moral truth claim from the start. However, I disagree with Rawls when he states that he develops a partial comprehensive theory of justice. Despite the fact that Rawls constructs ‘justice as fairness’ to be independent of one singular comprehensive moral truth claim, hence making ‘justice as fairness’ as he says partially comprehensive, I argue that ‘justice as fairness’ should rather be referred to as a predominantly comprehensive doctrine and not a partially comprehensive theory of justice.

I argue that ‘justice as fairness’ is a *predominantly* comprehensive doctrine and not a *partially* comprehensive theory of justice insofar as it prescribes certain core moral values that impact not *some aspects* but the *fundamental aspects* of citizens’ personal lives. I argue that Rawls’s theory of justice is prescriptive of the *core aspects* of a person’s moral values, as Rawls’s theory of justice (as illustrated in the above example) necessitates how persons can structure their most private sphere of their life namely, how they choose to structure their household.

⁷¹ Other moral values that Rawls considers essential for citizens to uphold in a Rawlsian society are values such as: Fair social cooperation, civility, reasonableness, sense of fairness, respect for freedom and equality (Rawls 1996, 193-194). Refer to *Liberal Virtues: Citizenship, Virtue and Community in Liberal Constitutionalism* (1991) by S. Macedo for a comprehensive discussion on the moral virtues that liberals prescribe.

⁷² Note here how I use the terminology comprehensive doctrines of ‘the good’ and comprehensive theory of justice. As a reminder, Rawls argues that his theory of justice can account for the multiple existence of comprehensive doctrines of ‘the good’ because he does not prescribe an antecedent moral truth claim. As a result of this he argues that his theory of justice is only partially comprehensive and not fully comprehensive as he does not prescribe all aspects of citizens life (Rawls 1999, 175).

Rawls in *Political Liberalism* (1996, 194), acknowledges that his theory of justice is prescriptive of ‘the good’ to *some extent*, when he states, “justice as fairness affirms the superiority of certain forms of moral character and encourages certain moral virtues”. Therefore, acknowledging that ‘justice as fairness’ is *partially* comprehensive to the degree that it prescribes *some* personal moral virtues but *not all* aspects of personal moral life.

I agree with Rawls that his theory of justice is not fully comprehensive as I agree that his theory of justice *does not prescribe all* moral aspects of a person’s life. Rawls’s theory of justice does not prescribe how citizens give meaning to their lives, for example it does not prescribe whether citizens must or must not believe in life after death. Nor does a Rawlsian society prescribe citizens’ personal morality, for instance, whether citizens must give to a charity or how they choose to spend their time.

Given that I agree with Rawls that his theory of justice is not fully comprehensive, however I disagree that it is partially comprehensive as I argue that his theory of justice is more prescriptive of morality than he acknowledges. This is precisely why I argue that his theory of justice should be referred to as ‘predominantly comprehensive’ as it prescribes the core moral values that structure *the fundamental values*, although *not all aspects*, of a persons moral life. Whereas the use of partially comprehensive to refer to Rawls’s theory of justice is suggestive that *only some* and not *the fundamental* moral values are prescribed. Hence the word *predominantly* exemplifies the comprehensiveness of Rawls’s theory of justice illustrating the place of ‘justice as fairness’ on the continuum of ‘the right’ and ‘the good’ more accurately than the word *partially*. As the word *predominantly* is suggestive that his theory of justice is a degree more than partially comprehensive but still lower than fully comprehensive in terms of the continuum.

In light of the fact that I argue that Rawls’s theory of justice is a predominantly comprehensive theory of justice, I do not agree with this use of ‘comprehensive’ to refer to the types of goods that can exist in a Rawlsian society. Let us consider for a moment why I do not agree with his use of ‘comprehensive’ to refer to the fact that ‘justice as fairness’ enables citizens to affirm the multiple co-existence of reasonable comprehensive doctrines of ‘the good’ (Rawls 1987, 4).

I do not agree with the use of the term ‘comprehensive’ to refer to the ideas of ‘the good’ that exist in a society structured by ‘justice as fairness’, because, as I argue ‘justice as fairness’ itself is a *predominantly* comprehensive theory of justice. The implication of this, is that no ideas

of ‘the good’ that exists in a Rawlsian society can exist unmediated. This means that all ‘comprehensive’ (as Rawls calls them) ideas of ‘the good’ have to either conform to the bounds set by ‘the right’ or they cannot exist within such a society.

I do recognise that Rawls uses the term ‘reasonable’ to delimit the idea of comprehensive doctrines of ‘the good’. In *Political Liberalism* (1996, 64) Rawls makes the distinction between reasonable and unreasonable doctrines, when he states “... there are doctrines (i.e. unreasonable doctrines) that reject one or more democratic freedoms is itself a permanent fact of life or seems so. This gives us the practical task of containing them – like war and disease – so that they do not overturn political justice”. Thus, Rawls using the term ‘reasonable’ to demonstrate the idea that the (as Rawls calls them) comprehensive goods that do exist, exist in line with what is morally reasonable (Rawls 1996, 58-66). However, the term ‘reasonable comprehensive goods’ does not illustrate the fact that in a Rawlsian society these goods cannot be considered comprehensive because these goods themselves are already restricted by ‘the right’. Insofar as ‘the right’ limits or constrains the content of reasonable ideas of ‘the good’, these ideas cannot be comprehensive I argue, if we understand ‘comprehensive’ to mean that these doctrines are complete, or whole or unaltered religious, moral, philosophical or metaphysical doctrines.

Hence, I argue that the use of the term ‘comprehensive’ to describe the existence of multiple conflicting ideas of ‘the good’ is misleading. Moreover, I think it is also misleading to say as Rawls does that a *partially* comprehensive theory of justice enables the co-existence of *multiple comprehensive* ideas of ‘the good’, because it does not demonstrate how these different degrees of comprehensiveness relate to one another. Therefore, as mentioned in Chapter 1 and earlier in this chapter, I would suggest rather replacing the term ‘partially comprehensive’ with the term ‘predominantly comprehensive’ to refer to Rawls’s theory of justice itself and then replace the use of the term ‘comprehensive’ with the term ‘circumscribed’ when referring to the acceptable doctrines of ‘the good’ that exist in a Rawlsian society.

Hence, instead of stating that Rawls’s ‘justice as fairness’ is ‘partially comprehensive’ and as such ‘justice as fairness’ enables the multiple co-existence of reasonable *comprehensive* ideas of ‘the good’ (ibid.), I suggest rather stating that, Rawls develops a ‘predominantly comprehensive’ theory of justice, namely ‘justice as fairness’, which enables the multiple co-existence of reasonable *circumscribed* moral, political, religious and metaphysical doctrines

of ‘the good’. What does the term ‘circumscribed’ tell us about Rawls’s theory of justice that is not captured with the use of ‘comprehensive’ in relation to doctrines of ‘the good’?

The term *circumscribed goods* encapsulates the understanding that these so-called comprehensive doctrines of ‘the good’ are narrowly limited by ‘the right’. In other words, ‘the right’ encircles these comprehensive doctrines of ‘the good’ and restricts them to the bounds of justice. As a result of this, the religious, philosophical or metaphysical, ideas of ‘the good’ are, I argue, less comprehensive than they would be if they were not bound by ‘the right’, meaning, that because they are bound by ‘the right’ some of these doctrines of ‘the good’ must change, i.e. lose some of their prescriptive force to exist within a Rawlsian society. Hence, these reasonable *circumscribed* theories of ‘the good’ still uphold their moral truths and therefore have elements of comprehensiveness inasmuch as they prescribe moral truth. However, the comprehensiveness of doctrines of ‘the good’ is surpassed as it were by a higher order comprehensiveness, namely ‘the right’, and as such, the comprehensiveness of theories of ‘the good’ is fundamentally limited. Therefore, I use the word circumscribed to illustrate this categorical limiting function of ‘the right’ on all conceptions of ‘the good’ in a Rawlsian society.

In light of this, just as the idea of critical distance is not as distinct or as clear cut as is suggested by notions of the priority of ‘the right’, so too is the idea of comprehensiveness. The thought that there are different levels of comprehensiveness at work in Rawls’s theory of justice adds to my argument: That if one were to analyse the debate between ‘the right’ and ‘the good’ as two distinct methodological positions it will result in one overlooking the complexity of this moral prescriptive force evident in ‘justice as fairness’ between ‘the right’ and ‘the good’.⁷³ Hence, by rather analysing the debate between ‘the right’ and ‘the good’ as

⁷³ A further point of research could be analysing whether ‘the right’ could be limited by ‘the good’ in terms of the role of an overlapping consensus. If we understand the overlapping consensus to be fluid insofar as it has the possibility to change when there is a change with regards to what a society regards as morally reasonable. Hence if there is a change to the content of ‘the right’, this necessarily implies that there would be changes to the overlapping consensus. One could analyse if there are changes in the overlapping consensus does this impact ‘the right’. Is there a fluid movement between ‘the right’ and ‘the good’, in terms of a symbiotic relationship? In analysing whether ‘the right’ could be said to be limited by ‘the good’ one could analyse if there is a relationship of supervenience between ‘the right’ and ‘the good’ whereby an analysis could be done to demonstrate if ‘the good’ supervenes on ‘the right’ then any difference in ‘the right’ necessarily promotes a difference in ‘the good’ or ‘the good’ cannot vary unless ‘the right’ varies. Or if an argument was made for the inverse, namely that ‘the right’ supervenes on ‘the good’ if any difference in ‘the good’ necessarily promotes a

two fluid methodological ranges on a continuum, one is able to zoom in on the complexity between the notion of comprehensiveness and objectivity for instance.

Necessarily theorists that prioritise either ‘the right’ or ‘the good’, when developing their moral or political theory, cannot account for all possible forms of life. In other words, theorists cannot take into account every comprehensive conception of ‘the good’. Thus, any theorist when affirming either the methodological approach of the priority of ‘the right’ or ‘the good’, will naturally favour and hence encourage certain forms of life and as a result would exclude other forms of life. By re-conceptualising the debate as a fluid methodological range, we can analyse which forms of life moral and political theorists include and exclude in their theories in a more productive manner. This will in turn enable us to analyse the *degree of comprehensiveness* evident in moral and political theories.

Therefore, the priority of ‘the right’, I argue, does not necessarily imply that there is no relationship between ‘the right’ and ‘the good’, but rather it is suggestive of a *distinctive way in which they relate*. Thus, as we have seen from the above analysis that the dichotomised relationship between ‘the right’ and ‘the good’ as suggestive of the current debate may not be as dichotomised as originally thought, we must view the debate as a methodological tool to analyse how moral and political theorists wish to relate ‘the right’ and ‘the good’. In doing so, we can analyse which aspects of a theory a theorist desires to keep static or put in flux. What a theorist chooses to keep static or put in flux influences how comprehensive or objective a moral or political theory is.

For instance, Rawls chooses to keep justice on a stable (objective) foundation while ‘the good’ can be in flux to the degree that it is contingent i.e. derived from ‘the right’. Whereas theorists that prioritise ‘the good’ choose to keep the question of morality stable or static, meaning that they develop a comprehensive moral doctrine as the basis for justification of their theory while ‘the right’ is kept in flux. In other words, ‘the right’ is left undetermined, insofar as what is right is contingent on what is good. In this way, theorists that prioritise ‘the right’ develop a singular theory of ‘the right’ but develop a plural theory of morality. For example, Rawls develops one single coherent view of justice but develops a multidimensional view of ‘the good’. In contrast, theories that prioritise ‘the good’ develop a singular theory or uniform standard of ‘the good’, but a plural theory of ‘the right’, meaning

difference in ‘the right’ or ‘the right’ cannot vary unless ‘the good’ varies. This latter option would illustrate the interplay between ‘the right’ and ‘the good’ in terms of how the overlapping consensus could limit ‘the right’.

they develop one single coherent standard of morality as a moral basis that then determines ‘the right’.

Theorists that develop a moral or political theory by prioritising ‘the right’, such as Rawls’s theory of justice, are appealing⁷⁴ I argue, because the question of justice is determined and hence the standard of what justice is, is uniform. Moreover, specifically with regards to Rawls’s theory of justice, the priority of ‘the right’ enables more diverse forms of morality to co-exist in a society than is the case with theories in which ‘the good’ has been prioritised⁷⁵, since they allow for plural conceptions of ‘the good’. Hence, this theory of justice is an attractive theory of justice for any society characterised by moral pluralism, as it fosters citizens’ liberty of conscience. In other words, it encourages citizens to exercise their freedom to develop, choose and construct their moral views more so than they would in societies that prescribe a singular standard of morality.

I have argued that since a Rawlsian society does not exclude goods on the grounds of a singular moral truth, this is not to suggest that his theory of justice is only *partially* comprehensive. It is rather as I suggest *predominantly* comprehensive, as ‘the right’ acts as the legitimating condition for all possible conceptions of ‘the good’. Hence that it why I refer to these ideas of ‘the good’ as circumscribed and not comprehensive (as Rawls suggests), as these goods are categorically limited by ‘the right’. Inasmuch as ‘the right’ i.e. Rawls’s theory of justice limits the ideas of ‘the good’ as what is and is not acceptable moral values, Rawls’s theory of justice is a *predominantly* comprehensive theory as it prescribes the persons core influential moral values while leaving some room for moral freedom if and only if these moral values, virtues or ideals do not contradict with those moral values, virtues and ideals upheld by ‘the right’.

Given this, Rawls’s ‘justice as fairness’ in terms of the continuum – on which ‘the right’ and ‘the good’ move – is positioned with degrees 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

⁷⁴ I use the words ‘appealing’ and ‘attractive’ in this paragraph and the next, to illustrate the possibilities or the positives aspects of such a theory.

⁷⁵ I say specifically Rawls’s theory of justice as it does not rely on antecedent moral truth claims even though I argue he develops a predominantly comprehensive doctrine. There are theorists that prioritise ‘the right’ by relying on antecedent moral truth claims in developing a comprehensive account of ‘the good’, such as Kant’s liberalism.

an objective method of justification and developing the universal relativistic ideals of justice and morality (mentioned previously in this chapter). In contrast to this, Rawls's theory of justice has gradations of the priority of 'the good' in terms of a subjective method of justification. For instance, Rawls's theory of justice does not prescribe how citizens give meaning to their lives, for example it does not prescribe whether citizens must or must not believe in life after death. Nor does a Rawlsian society prescribe citizens' personal morality, for instance, whether citizens must give to a charity or how they choose to spend their time. Nonetheless, I argue, as stated above, that Rawls's theory of justice is *predominantly* comprehensive as it prescribes the essential moral values and as a result there are forms of life or doctrines of 'the good' that a Rawlsian society would categorically exclude.

In summary, having reflected on the structural relation of the priority of 'the right' in Rawls's 'justice as fairness' it is evident that the methodological position of the priority of 'the right' does not neglect the role of 'the good'. Given this, I argued that it is important to reconceptualise the debate between 'the right' and 'the good' as fluid ranges on a continuum in order to account for the nuanced way in which Rawls specifically, but moral and political theorists in general, relate and give content to and justification for 'the right' and 'the good'. In light of this, I argued that Rawls's theory of justice is not *fully* comprehensive as theorists that uphold one antecedent moral truth claim, nor is it *partially* comprehensive as Rawls suggests, as I argue that Rawls's theory of justice is more prescriptive than the word *partially* suggests to the degree that there are more than just *some* moral values that are prescribed. Hence, I argue, Rawls's theory of justice is in fact, *predominantly* comprehensive, precisely because the content of 'the right' is moral. To clarify, the moral assumptions embedded in the content of 'the right' are themselves particular to the norms and ideals of a modern democratic society and as such the content of 'the right' is relative to a particular society.

Given that we know that priority of 'the right' categorically limits 'the good', this implies that the types of goods that can exist in a Rawlsian society are, *circumscribed*, as they are limited by the moral values that all persons find reasonable i.e. 'the right'. Insofar as a Rawlsian society does not allow doctrines of 'the good' that contradict or undermine 'the right' (this is unreasonable or irrational doctrines) then Rawls's theory of justice is prescriptive of 'the good' even though he prioritises 'the right'. I discussed just how prescriptive these moral values of 'the right' are in the example of toleration, when these moral values themselves end up structuring the way in which citizens in their private sphere

(viz. household) relate to one another. It is for this reason, that I suggest that we need to reconceptualise the debate between ‘the right’ and ‘the good’ in order to understand this nuanced relationship Rawls and other theorists develop between ‘the right’ and ‘the good’.

Chapter 6: Conclusion

This dissertation set out to critically evaluate the priority of ‘the right’ in Rawls’s ‘justice as fairness’. I first clarified what Rawls implies when he states that his theory prioritises ‘the right’. Secondly, I illustrated how Rawls’s theory of justice exemplifies the priority of ‘the right’. In doing so, I explicated key notions of ‘justice as fairness’ in Chapter 2 to tease out the theoretical structure of the priority of ‘the right’ in terms of the content of and justification for ‘justice as fairness’. I explained notions such as: The political conception of

the person, political constructivism, 'primary goods', 'thin theory of the good', reflective equilibrium, 'the fixed considered judgment of justice', the two principles of justice, 'overlapping consensus', 'social union of social unions', and lastly the notion of moral reasonability replacing the notion of moral truth.

To recap; by the priority of 'the right' Rawls suggests that justice, both in terms of its content (i.e. the principles) and its justification, is independent of moral truth claims (ibid., 129). In other words, justice is derived prior to and independently of any comprehensive moral doctrine. And, as such, 'the good' must conform to the bounds set by 'the right', meaning that 'the right' sets the conditions for what is considered to be reasonable, comprehensive moral doctrines. To summarise, this methodological position of the priority of 'the right' is evident in 'justice as fairness' in the following manner:

Rawls begins his theory of justice by constructing a hypothetical thought experiment, namely the original position, with the aim to impartially evaluate competing political theories. To achieve this impartial evaluation, Rawls constructs the veil of ignorance to ensure conditions of fairness and equality between all artificial agents when agreeing to principles of justice they would wish to be governed by. Therefore, the veil of ignorance prevents artificial agents justifying principles of justice in terms of the comprehensive moral doctrines they subscribe to. Hence, the priority of 'the right' is evident in 'justice as fairness' in terms of the neutral ground or impartial procedure that Rawls develops to justify the content of justice.

With that said, it was illustrated that the content of 'the right' (i.e. the principles of justice) is not independent of all ideas of 'the good'. In fact, Rawls demonstrates the necessity for 'justice as fairness' to align with citizens' moral sentiments. As such, it is essential for Rawls to encapsulate the latent moral sentiments that all citizens of a constitutional democratic society share. He achieves this by developing an equilibrium between the principles of justice and citizens' 'considered convictions' of justice. Thus, Rawls constructs 'justice as fairness' to affirm the general moral sentiments all citizens of a constitutional democratic society share, such as, liberty of conscience. Hence, Rawls constructs the content of 'the right' to embody certain moral values, however these moral values are shared by all citizens and as such are universally desired.

Therefore, the content of 'the right', although moral, does not rely on a comprehensive account of 'the good' for its justification. This is essential for Rawls as a constitutional

democratic society is fundamentally characterised by moral pluralism, hence the idea of moral truth as the justification for justice would undermine the freedom of such a society. Therefore, he argues that although he constructs justice with fundamental moral virtues, these moral values do not imply a moral truth but rather a consensus regarding what all citizens consider to be morally reasonable.

It is this overlapping consensus of what is morally reasonable that is the foundation for a moral community in a Rawlsian society. In other words, all citizens agree to uphold the principles of justice as the principles of justice themselves embody the general moral sentiments that all citizens share. In this way, these principles of justice define the limits of what is acceptable moral values in a Rawlsian society. In other words, any theory of 'the good' that does not align itself with the principles of justice would necessarily be excluded from such a society. Yet, at the same time, Rawls is able to argue that citizens have moral freedom to choose any reasonable (as he calls them) comprehensive doctrines of 'the good' that they wish. It is precisely the methodological position of the priority of 'the right' that enables this moral freedom in 'justice as fairness'.

It is specifically this lack of moral freedom evident in theories that embody the priority of 'the good' that Rawls is critical of. The priority of 'the good' as opposed to 'the right', develops what is just from what is moral, and as such the justification of justice is dependent on and, hence, derived from a particular moral truth. Rawls argues that this leaves justice undetermined. Theorists such as Bentham and Mill in developing classical utilitarianism, hold justice to contingency insofar as what is justice is determined by a specific moral truth. In Chapter 3, Rawls's critique of utilitarianism was analysed and in light of this critique it became evident why Rawls was influenced by Kantian deontology when constructing 'justice as fairness'.

Rawls wishes to avoid the relativism present in teleological theories (such as utilitarianism) when he addresses questions of justice. Therefore, theorising about justice from a detached perspective became appealing in working out his own conception of justice. Rawls finds the priority of 'the right' evident in Kant's moral philosophy appealing as it ensures the stability of justice due to the objective method of justification that it promotes. This objective method of justification associated with theorists that prioritise 'the right' is attractive for Rawls as this enables him to construct 'justice as fairness', on the one hand, to categorically respect and affirm the fundamental liberties of a constitutional democratic society. On the other hand, this

impartial or neutral method of justification enables Rawls to justify principles of justice that would be universally agreed to by all citizens of a particular democratic society without appealing to a comprehensive doctrine of 'the good' as the foundation for justification.

In light of Rawls's appeal to a detached method of justification, in Chapter 4 I re-evaluated this appeal by highlighting major, so-called 'communitarian' critiques of theorists that prioritise 'the right'. Theorists such as MacIntyre, Sandel, Taylor and Walzer all share a similar line of argument insofar as they, on the one hand, argue that theorists that prioritise 'the right' neglect the fundamental place of 'the good' in society. On the other hand, they argue the view of the self as a rational abstract entity misconstrues the essence of what it means to be human. Instead, these theorists rather argue that the self is fundamentally constituted by the ontology of the world and as such, to construct the self as having the possibility to detach itself from the historicity of the world, is to neglect the particular factors of society as a constitutive element of the self.

Moreover, it is this possibility of justifying political principles independently of the circumstances to which they subscribe to that is problematic for MacIntyre (2007, 19) and Sandel (1984, 93-94), as they argue this had led to the degeneration of moral community in society. Taylor (1985, 207), in his turn, argues that Rawls's theory of justice insofar as it is advocates for a liberal society is not as neutral as it appears, resulting in the failure of the priority of 'the right'. Walzer (1983, 3-4) argues that the question of the distribution of resources should not be based on an abstracted methodology (i.e. the priority of 'the right'). This is problematic, according to Walzer (*ibid.*), as goods – the content and distribution of them – are a result of, and hence gain their meaning from, the context to which they apply.

Given these caveats of Rawls's 'justice as fairness', specifically the methodological position of the priority of 'the right', in the last part of Chapter 4, I constructed a possible Rawlsian response to these communitarian critiques. In my response I firstly addressed the communitarian critique of the 'unencumbered' or 'neutral' self, arguing that Rawls grounds his theory of justice on the particular fact that this theory is to apply to a constitutional democratic society and as such the self that is to adopt this theory of justice is grounded in this particular tradition. Hence, the self may have the possibility for detachment, but this detachment is never absolute for it is constituted by a particular facticity.

Thereafter I responded to the critique that theorists that prioritise ‘the right’, neglect the role of ‘the good’ in society. I demonstrated that ‘the right’ and ‘the good’ in ‘justice as fairness’ are complementary and as such they both are essential aspects of a theory of justice for Rawls. Hence, ‘justice as fairness’ has to exemplify the core moral values that all persons of a constitutional democratic society share. As such, the content of justice affirms fundamental political (moral) values that all citizens share. In light of this I argued that Rawls does not neglect ‘the good’ or leave it undetermined; in Chapter 5, I argued the exact opposite, it is precisely because he prescribes the core moral values, virtues and ideals of persons’ lives, Rawls develops a ‘predominantly comprehensive’ and not a ‘partially comprehensive’ theory of justice.

Given the nuanced way in which Rawls develops a ‘predominantly comprehensive’ theory of justice, Rawls, I argue, enables *circumscribed* and not the co-existence of *comprehensive* accounts of ‘the good’ as he suggests. I argue that these goods are *circumscribed* and not *comprehensive*, as the doctrines of ‘the good’ that can exist in a Rawlsian society do not exist unmediated, meaning all ideas of ‘the good’ must conform to the bounds of ‘the right’, and in this way, ‘the right’ draws the boundaries around what are acceptable and unacceptable doctrines of ‘the good’. Hence, any doctrine of ‘the good’ within Rawls’s theory of justice, ‘justice as fairness’ cannot exist unaltered, in other words, it cannot exist with the same degree of comprehensiveness as it would if it were not bound by ‘the right’.

In light of this, I argue that to refer to the goods that exist in a Rawlsian society as (as Rawls does) comprehensive goods would be misleading. It is misleading, I argue for Rawls to refer to the co-existence of reasonable comprehensive goods in a society structured by ‘justice as fairness’ as this view does not illustrate the fact that in a Rawlsian society these goods cannot be considered comprehensive because these goods themselves are already restricted by ‘the right’. Therefore, I suggested rather replacing the use of ‘comprehensive’ with the word ‘*circumscribed*’ when referring to the acceptable doctrines of ‘the good’ that exist in a Rawlsian society.

The term *circumscribed goods* encapsulates the understanding that these so-called comprehensive doctrines are narrowly limited by ‘the right’. Hence, any religious, philosophical or metaphysical ideas of ‘the good’ are less ‘comprehensive’ (if we use Rawlsian terminology) than they would be if they were not bound by ‘the right’. Therefore, the comprehensiveness of any doctrine of ‘the good’ is bound by a higher order

comprehensiveness namely 'the right' and as such the comprehensiveness of the acceptable ideas of 'the good' is fundamentally limited. Therefore, I suggest the word 'circumscribed' to illustrate this categorical limiting function of 'the right' on all conceptions of 'the good' in a Rawlsian society.

Thus, although Rawls argues that his theory is only partially comprehensive and not fully comprehensive as his theory of justice does not rely on antecedent moral truth claims or a particular moral comprehensive doctrine, the condition of moral reasonability (i.e. 'the right'), delimits what is morally acceptable. It is in this sense that Rawls's theory of justice, I argue, is predominantly comprehensive, even though it does not promote a particular moral comprehensive doctrine, the moral values, virtues and ideals it promotes ends up delineating the essential moral values of a person's moral life. In this context, in order to more deeply explore the fundamental difference between moral reasonability and moral truth, a further possible research project could be to consider whether moral reasonability leads to the same comprehensiveness as moral truth.

Since I argue that Rawls in fact develops a 'predominantly comprehensive' theory of justice even though he develops a theory of justice that prioritises 'the right', I suggest a re-problematisation of the debate of 'the right' and 'the good'. Specifically, I suggest recasting the debate in terms of conceptualising the priority of 'the right' and the priority of 'the good' as two positions on a continuum. The concepts of 'the right' and 'the good' as two opposing ends of the debate are noticeably distinct, while on the continuum, the priority of 'the right' and the priority of 'the good' are at the same time both more or less gradually similar and divergent from one another. While the priority of 'the right' and the priority of 'the good' represent two distinct points, they are adjacent, in the sense of there existing potential for a gradual movement for moral and political theorists in terms of constructing theories with more or less qualities of either position.

The purpose of this is to demonstrate that the idea of comprehensiveness (particularity) or critical distance (objectivity) is not clear cut. And if we conceptualise moral or political theories in terms of the current dichotomised debate, we in fact run the risk of missing the nuances in the theories themselves, as we try to compartmentalise them into either the priority of 'the right' or 'the good' and their necessary characteristics. Thus, I argue that this debate between the priority of 'the right' and 'the good' has been presented as a false dichotomy missing much of what happens in political and moral theorising.

Reconceptualising the debate as not a static, but rather as a fluid theoretical lens through which to evaluate and compare moral and political theories, will enable researchers to overcome the methodological stalemate associated with this debate. In addition, it will allow an appreciation of the true depth and value of Rawls's 'justice as fairness'.

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