FAIRNESS AS STABILITY

RAWLS, SCHMITT AND THE CONTEMPORARY CRISIS OF LIBERAL DEMOCRACY

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This work is substantially my own, and where any part of this work is not my own, I have indicated this by acknowledging the source of that part or those parts of the work.

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Abstract

In 2019, liberal democracies around the world are experiencing a crisis of antagonism, as mutually hostile groups threaten to undermine democratic stability. Drawing on the political theories of Carl Schmitt and John Rawls, this thesis identifies the possibility of a liberal response. Schmitt’s critique of liberalism is addressed with reference to Rawls’s arguments for the stability of a well-ordered society as expressed in *Political Liberalism* (1993). Rawls’s account of moral psychology, which forms the basis for the overlapping consensus of reasonable comprehensive doctrines, is proposed as a compelling response to those affirming unreasonable doctrines. The contemporary crisis is explained as a failure of reciprocity resulting from the neglect of Rawls’s “difference principle”. This neglect has encouraged citizens to affirm unreasonable doctrines within mutually exclusive and hostile associations. I suggest that a Rawlsian response based on the broad acceptance of justice as fairness as the basis of a modus vivendi is both possible and necessary.
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Introduction

“One could test all theories of state and political ideas according to their anthropology and thereby classify these as to whether they consciously or unconsciously presuppose man to be by nature evil or by nature good.”

Carl Schmitt, *The Concept of the Political*

“If a reasonably just society that subordinates power to its aims is not possible and people are largely amoral, if not incurably cynical and self-centred, one might ask with Kant whether it is worthwhile for human beings to live on the earth? We must start with the assumption that a reasonably just political society is possible, and for it to be possible, human beings must have a moral nature, not of course a perfect such nature, yet one that can understand, act on, and be sufficiently moved by a reasonable political conception of right and justice to support a society guided by its ideals and principles.”

John Rawls, *Political Liberalism*

In characteristically incisive and polemical fashion, Carl Schmitt, the conservative Weimar-era jurist and political theorist, draws a clear distinction between two families of political theory: the optimistic and the pessimistic.¹ He concludes decisively in favour of the latter, proclaiming that “all genuine political theories presuppose man to be evil” and adopting a view of humanity as tending naturally to act in aggressive and corrupt ways.² Those political theories which presuppose humanity to be good are considered by Schmitt to be at best naïve and at worst dangerous. Liberalism bears the brunt of Schmitt’s critique, upholding in his view a weakly


² Schmitt, COP, 58-61.
optimistic anthropology and ultimately containing neither “a theory of state” nor “a basic political principle.”

If one accepts Schmitt’s crude yet provocative distinction between optimistic and pessimistic political theories, then perhaps no thinker better exemplifies the supposedly naïve, potentially dangerous non-theory that is liberalism than John Rawls, the most important liberal political theorist of the twentieth century. Animated by a desire to derive principles of justice from the reasoned application of moral sentiments, and subsequently to explore how these principles could form the basis of a well-ordered society, Rawls reflects a liberal optimism that, under the right circumstances, people can behave in a just manner. In doing so, he proposes the two principles of “Justice as Fairness” and ultimately concludes in his later work, *Political Liberalism*, that they could form the basis of a freestanding political conception of justice that would be accepted by all reasonable comprehensive doctrines in a well-ordered society.

Even a brief overview of Rawls’s work indicates that, while he lacks a romantic faith in the “natural goodness of man”, there is a fundamental belief that people (in early Rawls) or citizens (in later Rawls) can come to see themselves and others as free and equal, and engage in society as a fair system of cooperation. This optimism, in the eyes of a thinker like Schmitt, who hearkens explicitly back to Hobbes and Machiavelli, as well as to Catholic and

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3 Schmitt, COP, 60-61.
6 Rawls, TOJ, 60-62.
7 Rawls, PL, 10-11.
9 Rawls, PL, 14-20.
Augustinian thinkers such as Donoso-Cortes and de Maistre, would render Rawls’s political liberalism either dangerously weak, or even more dangerously deceptive. This is because, without the necessary acknowledgement that human beings are ineradicably evil, Rawls’s political theory fails to come to terms with the fact at the heart of the political: the ever-recurring possibility of antagonism.

This Schmittian indictment of liberalism – as unable or unwilling to engage with the ever-present possibility of conflict between friends and enemies – is, on the one hand, a potentially important critique of the most prominent conception of liberalism in democratic and political theory. On the other hand, and more to the moment, Schmitt’s indictment is of great interest in our own political climate. Political discourse in democracies throughout the world is becoming increasingly antagonistic, political divisions are deepening, and liberal-democratic institutions appear fundamentally ill-equipped to respond. From the US to the UK, from Turkey to Brazil, political figures and movements that classify their opponents as enemies, challenge the norms of liberal-democratic society, and aggressively undermine the conception of society as a system of fair cooperation, appear to be on the rise. Overlapping and intersecting crises in the economic, political and social spheres have contributed to a broadly perceived recurrence of antagonism, which Rawls’s political liberalism does not appear, prima facie, to address. It is possible to imagine, in the contemporary climate, that Schmitt’s critique of liberalism is

10 Schmitt, COP, 50-51, 61, 79.
valid, and the Rawlsian ideal of a stable, well-ordered liberal democracy is a utopian impossibility.

I will argue that this is not so. Establishing a dialogue between Schmitt and Rawls in view of the contemporary crisis of liberal democracy, I will contend that Rawls, in attempting to validate the best impulses of humanity does not ignore or marginalise the possibility of conflict (or as Schmitt would put it, that human beings can be evil). Rather, many of Rawls’s most important concepts, including the overlapping consensus of reasonable comprehensive doctrines, public reason and the principle of legitimacy, and his unique account of moral psychology, are specifically dedicated to addressing antagonism, precisely in the sense that Schmitt uses the term. Indeed, a key aim of Rawls’s political philosophy is to provide an argument for how we can establish a society where the political is no longer forever lapsing into the conflict between friends and enemies.

In other words, Rawls is not just one more liberal thinker who, according to Schmitt, avoids or obscures the real challenge of the political. To the contrary, Rawls founds his political philosophy on the acknowledgement of this reality and sets out to provide a political theory and moral psychology to mitigate and hopefully even defuse it. Further, my interpretation of Rawls will establish his relevance beyond the realm of ideal theory and indicate the misguided nature of realist interpretations and criticisms that, inspired by Schmittian concerns, dismiss Rawls as a misguided idealist or moralist who ignores political “reality”.

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14 Matt Sleat, “Introduction: Politics Recovered: On the Revival of Realism in Contemporary Political Theory,” in Matt Sleat (ed.) Politics Recovered: Realist Thought in Theory and Practice (New York: Columbia University Press, 2018), 3-4; Williams, In the Beginning there was the Deed, 1-2; Geuss, Philosophy and Real Politics, 6-10.
I will argue that Rawls provides not just a compelling theoretical response to Schmitt but also an apt diagnosis of the contemporary crisis of liberal democracy as a failure of reciprocity and hence, of material equality. This is because the benefits of social cooperation are no longer being shared by society as a whole. On this basis, I will argue, citizens are retreating into precisely the kind of exclusive and mutually hostile groups that Schmitt took as the foundation of antagonism in *The Concept of the Political*. I propose that we can respond to this crisis with a new and necessary consensus as to the principles of justice governing our basic institutions.

This thesis proceeds as follows. Chapter 1 will outline the Schmittian critique of liberal democracy in the context of Rawls’s project of political liberalism. Chapter 2 will set out Rawls’s argument for the stability of a well-ordered society, built on an overlapping consensus of reasonable comprehensive doctrines. This chapter will also introduce the relevant concept of the “unreasonable doctrine” and the associated possibility of a recurrence of antagonism within the well-ordered society. Chapter 3 will explore what I propose to be the central aspect of Rawls’s response to the unreasonable and hence antagonism: the political conception of justice as fairness as engaging with our moral psychology and fundamental democratic values, leading citizens to develop a sense of justice. Chapter 4 will draw on the previous chapters to address the contemporary crisis of liberal democracy. The current recurrence of antagonism will be explained in Rawlsian terms as a failure of reciprocity leading citizens to turn to exclusive associations that uphold unreasonable doctrines. I suggest that this failure of reciprocity is due to the neglect of the difference principle. Ultimately, I will propose that a Rawlsian response to the contemporary crisis, centred on building a new modus vivendi as to the principles of justice as fairness, is both possible and necessary.
Chapter 1  Carl Schmitt: The Enemy of Liberalism

“The specific political distinction to which political actions and motives can be reduced is that between friend and enemy.”

Carl Schmitt, The Concept of the Political

Schmitt’s political theory, especially as expressed in his polemical Weimar-era works, provides us with both a provocative manner of conceiving of the political and an incisive critique of liberal democracy.¹ This chapter will outline Schmitt’s claim that the political is constituted by the possibility of a friend/enemy distinction. This will lead into his indictment of liberalism as unable or unwilling to acknowledge the reality of the political.

Schmitt’s critique, extended today by such radical democratic theorists such as Chantal Mouffe, poses a number of challenges for any theory of liberal democracy that wishes to engage with contemporary politics. Can liberalism engage with the ever-recurring risk of antagonism? Is it possible to have a democracy that is stable without being oppressively homogenous? Can liberal democracy genuinely defuse the risk of antagonism? Engaging first with Schmitt’s fundamental concepts, I will then formulate a Rawlsian response.

I  The Enemy, Antagonism and the Political

In order to justify a Rawlsian response to the risk of antagonism, we must first clearly establish the nature of antagonism as an issue to address. What is antagonism? Why does Schmitt think

that it lies at the heart of the political? What are the costs of trying, as he believes liberalism
does, to deny or wish away political antagonism?

Schmitt’s answers to these questions are found in his well-known early work, The Concept of
the Political (1932). It begins with the premise that, in order to clearly understand “the
political” as an aspect of the human experience, we must be able to clearly define it. Received
definitions of the political as constituted in relation to the state are, according to Schmitt, no
longer meaningful in the context of a modern democratic state that encompasses all aspects of
experience.\(^2\) What is it, Schmitt asks, that makes the political unique? What sets it apart from
the moral, the aesthetic, the religious, the economic and all other aspects of human life?\(^3\)

Having asked himself this question, Schmitt provides a characteristically provocative answer.
The political is defined by the unique distinction that it draws between the “friend” on the one
hand and the “enemy” on the other.\(^4\) This division between the friend and the enemy is akin to,
but separate from, the division between good and evil in morality, beautiful and ugly in
aesthetics, the saved and damned in religion, and useful and harmful in economics.\(^5\) It is the
characteristically political way of classifying and categorising experience. The friend is not
necessarily good, nor are they beautiful, nor are they economically useful. The enemy is not
inherently bad on a moral level, nor aesthetically ugly, nor an economic competitor. Rather,
friend and enemy are defined by the intensity of the association and dissociation that exists
between them and a particular “political entity”.\(^6\)

\(^2\) Schmitt, COP, 20-23.
\(^3\) Schmitt, COP, 25-26.
\(^4\) Schmitt, COP, 26.
\(^5\) Schmitt, COP, 26; Note that the Schwab translation provides the economic distinction as between ‘profitable
and unprofitable’, whereas the original German provides the distinction as between ‘nützlich und schädlich’ which
is better translated as useful and harmful.
\(^6\) Schmitt, COP, 28-29, 32-33.
The friend and enemy are “public” by reason of this fact: they are defined in relation not to private individuals, but rather to organised collectivities of people. The friend is not merely one towards whom we feel positive emotions, nor is the enemy an individual adversary. Rather, the enemy (to focus on the category treated more extensively by Schmitt) is one who, by definition, is entirely separate from and hostile on an existential level to a group of people conceived of as a political entity. They are the public enemy who poses a threat to the very existence of a politically organised collectivity of people.

For Schmitt, the political entity is best exemplified (and actualised) by the modern nation-state, which exercises its authority relatively unopposed over a people and a territory. The public enemy, in this case, is the enemy of the nation-state as a whole, rather than of any individual citizen of that state. For example, let us consider the United States of America. In 2003, the US defined the opposing nation-state of Iraq as its public enemy. Individual Americans did not necessarily feel personal enmity towards individual Iraqis. However, Iraq as a political grouping was entirely exterior to America, and in 2003, when America declared war on Iraq, it was defined conclusively as a public enemy. The declaration of war, on a concrete level, led to the large-scale killing of the enemy. On the other hand, while rival firms within America may consider each other “enemies” and engage in ruthless economic competition, this enmity does not (in normal circumstances) necessitate the physical killing of workers of one firm by

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8 Schmitt, COP, 29-30.
9 Schmitt, COP, 29-30.
10 Schmitt, COP, 29-30.
the workers of another. These are not decisive political entities and thus the enemy in this context is not the public enemy.  

That said, Schmitt leaves open the possibility that relations that are traditionally private in nature can become political, if they reach a level of hostility sufficient to lead one group of people to define the other as an enemy. He emphasises that any religious group, political party or social class can become a political grouping. The only essential criterion is that a group is able to decide upon the existence of an enemy, hostile on an existential level, who may have to be physically fought and repelled. This possibility, that any economic, religious, moral or other opposition could reach a sufficient intensity to lead to violent conflict, poses a substantial risk to security and stability. When such an outbreak of the political occurs within a nation-state, for example, it finds itself in a condition of civil war. Continuing the above example, if the US becomes sufficiently weak, and the economic rivalry between two firms sufficiently strong, that the firms become decisive in declaring each other enemies to be physically killed, then that economic rivalry will have become political and a civil war will have begun.

The Schmittian political is thus the ever-present possibility of antagonism, within the state and without. However, in emphasising the inevitability and dangers of the political, Schmitt also explores how recognising the enemy can be a valuable moment of self-definition for the political group. Deciding on the existence of an enemy and establishing a need to confront them is, in Schmitt’s view, the clearest expression of political activity and works to constitute a group in its most cohesive form. It is only through its relation to the enemy, a “mutually

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14 Schmitt, COP, 37.
negated otherness” (to quote Schmitt quoting Hegel),\textsuperscript{15} that a political group is able to define itself.\textsuperscript{16} Returning to the example above, the US becomes cohesive and united precisely at the moment that it identifies and declares Iraq to be the enemy. This is evident in the so-called “Rally ‘Round the Flag” effect of increased national sentiment that actually followed the initial declaration of war in 2003.\textsuperscript{17}

Schmitt thus warns of the risk of the political emerging within the state, and then indicates the positive potential that comes from recognising the enemy. While the fact of the political, expressed as the ever-recurring possibility of antagonism, leads to potential threats to security, recognising the political in a decisive way is one way to ensure that this threat is managed or eliminated.\textsuperscript{18} Avoiding the \textit{internal} emergence of the political is the primary purpose of Schmitt’s political theory, achieved by externalising antagonism and ensuring cohesion within a decisive political entity (which in our modern world is the nation-state).\textsuperscript{19} This emphasis on security situates Schmitt in a tradition of political theory that can be traced back to Hobbes and forward to modern “realists” who emphasise power, security and the risks of war as necessarily central to the political.\textsuperscript{20} It also leads into Schmitt’s critique of liberalism.

\section*{II Liberalism and the Political}

Schmitt’s fundamental premise, that the political is the ever-recurring risk of antagonism, leads him to conclude that the task of political theory is to determine the best way to avoid the recurrence of the political within the nation-state. Avoiding the political entirely is impossible.

\textsuperscript{15} Schmitt, COP, 63.
\textsuperscript{16} Schmitt, COP, 45-47, 63.
\textsuperscript{17} James M. Lindsay and Caroline Smith, ‘Rally ‘Round the Flag: Opinion in the United States before and after the Iraq War,’ \textit{Brookings Review} 21, no.3 (July 2003): 20-23.
\textsuperscript{18} Schmitt, COP, 29, 37.
\textsuperscript{19} Schmitt, COP, 44.
\textsuperscript{20} Sleat, “Introduction”, 3-4; Williams, \textit{In the Beginning there was the Deed}, 1-3; Geuss, \textit{Philosophy and Real Politics}, 6-10.
However, he does leave open the possibility that there can be stability and security within a political entity such as the nation-state, so long as it is cohesive and identifies its enemies with sufficient clarity and force.\textsuperscript{21}

The trouble with liberalism, however, is that on Schmitt’s account it is constitutively unable to do so. In this section, I will explore why. Briefly put, he argues that it ignores and denies the political in the interests of individualism, relies on a rationalistic faith in discussion, and attempts to divert antagonism towards the ethical and economic.\textsuperscript{22} This leads to either the emergence of antagonism or to a euphemistic renaming of the political and the suppression of liberalism’s enemies by another name.\textsuperscript{23}

\textit{A. Individualism and Rationalism}

Schmitt occasionally characterises liberalism as merely naïve and ill-guided in its ignorance (or perhaps repression in the psychoanalytic sense) of the political.\textsuperscript{24} However, his full account of why it denies the political is far more compelling. Liberalism, in his view, deliberately and instrumentally denies the political in the service of its fundamental purpose of protecting individualism. The freedom of the liberal individual is incompatible with the full recognition of the political and thus the political must necessarily be diverted. This necessity is combined with a rationalistic faith in the potential for consensus decisions to be reached by way of discussion, and the possibility of diverting antagonism towards the ethical and the economic.\textsuperscript{25}

\textsuperscript{21} Schmitt, COP, 78-79.
\textsuperscript{22} Schmitt, COP, 60-61, 68.
\textsuperscript{23} Schmitt, COP, 78-79.
\textsuperscript{24} Schmitt, COP, 60-61, 68.
Consider Schmitt’s historical reconstruction of the origins of liberalism. He identifies liberalism’s origins in the conditions of early modern Europe, as a defence of bourgeois individual freedoms against the oppressive imposition of monarchical authority. Its essential purpose was to secure the rights and freedoms of individuals in the face of public oppression.26 Such a conception of liberalism, as premised on defending individuals against oppression, can also be found in Judith Shklar’s “liberalism of fear”27 and Isaiah Berlin’s concept of “negative liberty”,28 as well as (at least partially) in Rawls’s discussion of the fact of oppression.29

Schmitt then claims that decisive political entities are antithetical to individualism. This is because a decisive political entity, such as a nation-state with a powerful sovereign, must be able to decide on the existence of the external and internal enemy, and thus also on the need for war. War requires the sacrifice of individual lives on the basis of a decision that has been made not in the interests of the individual themselves, but rather in the interests of the political group as a whole. The decisive political entity can compel this sacrifice against the will of the individual. It also has the power to decide on the existence of internal or domestic enemies, which can be individuals or groups within the state. The identification of the enemy, particularly the domestic enemy, and the power to declare war, can therefore justify the oppression of individuals in the interests of a political group.30

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26 Schmitt, COP, 69-78; Schmitt, CPD, 4-8.
29 Rawls, PL, 37. It must be noted that Rawls, in The Law of Peoples, recognises the possibility of a just war. See: John Rawls, The Law of Peoples, (Cambridge: Harvard University Press, 1999), 89-105. However, he does maintain the individual as the fundamental unit of analysis and concern and claims in A Theory of Justice that “each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override.” Rawls, TOJ, 3.
30 Schmitt, COP, 70-71.
Presented this way, Schmitt’s criticism flows naturally: the political, which necessitates sacrifice of individual life in the name of the collective, is directly opposed to liberal individualism. Liberalism by its very nature refuses to acknowledge the possibility of antagonism.

In addition to being antithetically opposed to recognising the political, Schmitt claims that liberalism also has an ill-founded faith in rational consensus-building. Contemptuously characterising liberals as a “discussing class”, he states that there is a general liberal principle “that the truth can be found through an unrestrained clash of opinion and that competition will produce harmony.” Thus, at the core of liberalism, and finding its ultimate expression in the institutions of parliamentary democracy, lies a belief that, through the rational weighing and counterweighing of various arguments, a true and universally acceptable decision can be reached. There is no need for authoritative decisions or antagonism because conflict can be avoided through conversation and compromise.

Chantal Mouffe, who draws on Schmitt and updates his critique from a contemporary radical democratic perspective, emphasises this rationalistic faith as a pillar of what she calls liberal post-politics. Liberalism, in her view as in Schmitt’s, believes that conflict can be rationally resolved and deflected towards ethical debate and economic competition. Rawls is explicitly critiqued by Mouffe on this basis, as she claims that his “ambition of rationally founding the

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32 Schmitt, PT, 59.
33 Schmitt, CPD, 35.
34 Schmitt, CPD, 35-36.
requirements of equality present in the common sense of Western democracies, starting from an individualist conception of the subject, can only run aground.\textsuperscript{36}

Liberalism, in the view of a Schmittian critique, is thus unable and unwilling to fully engage with the possibility of antagonism that lies at the heart of the political. The results of this failure to engage with the political are either the chaotic emergence of antagonism, or the oppressive renaming of the political. I outline both possibilities in the next two sections.

\textit{B The Recurrence of Antagonism}

The first possible outcome of liberalism’s failure to engage with the political is the emergence of antagonism within the political group. This failure of security, the risk that Schmitt sees as ever-present in politics, arises due to both the lack of a decisive political entity and the specific contradictions that arise out of the “marriage of convenience”\textsuperscript{37} between liberalism and democracy.

Liberalism and democracy are not, Schmitt emphasises, one and the same.\textsuperscript{38} Liberalism emerged in the early modern period in order to protect bourgeois individual freedoms on a universal and abstract level. Democracy, on the other hand, which Schmitt characterises as the triumphant force of the 19\textsuperscript{th} and 20\textsuperscript{th} centuries, is a movement of establishing equality within homogenous political groups.\textsuperscript{39} Both were initially united against absolute monarchies, yet they are distinct and even contradictory. While liberalism fails to engage with antagonism, democracy has the potential to be entirely “political” in the Schmittian sense.\textsuperscript{40}

\textsuperscript{36} Mouffe, \textit{The Return of the Political}, 33.
\textsuperscript{37} Shklar, “The Liberalism of Fear”, 19.
\textsuperscript{38} Schmitt, CPD, 22-28.
\textsuperscript{39} Schmitt, CPD, 22-23.
\textsuperscript{40} Schmitt, COP, 70-78; Schmitt, CPD, 22-28
This is because, within a democratic political group, members are defined in relation to each other as equal. However, they are also necessarily defined in relation to the unequal, outside “other”, a figure who is not part of the democratic group. This external “them” gives the democratic “us” its definition and provides democratic equality with its substance. It is only, Schmitt claims, the risk of inequality that gives equality any value, and so “Every actual democracy rests on the principle that not only are equals equal but unequals will not be treated equally.” This construction of an “us” as the demos of democracy, and a “them” outside of that demos, informs the characteristic (according to Mouffe) democratic logic of constructing differentiated identities, of forming homogenous political groups that are distinct from one another and that (in conditions of pluralism) can lead to the emergence of antagonism.

This creation of differentiated and potentially politically opposed democratic identities is contrasted to the universalising, anti-political tendencies of liberalism. Liberalism attempts to establish what Schmitt describes as a meaningless “democracy of mankind” without an exterior. Liberal equality, premised on a universalising individualism and thus lacking an exterior against which to define itself, is an “indifferent equality” without any true substance. It is this tendency towards an abstract universalism derived from its meaningless, ethical-humanist conception of the equality of all individuals, that informs liberalism’s denial of the political, of differentiation based on existential antagonism, and hence of democratic identity formation.

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41 Schmitt, CPD, 9-10.
43 Schmitt, CPD, 11-12.
44 Schmitt, CPD, 12; Mouffè, For a Left Populism, 14-15.
These contradictory imperatives of liberalism and democracy, in light of the unavoidable fact of the political, mean that liberal democracies are consistently prone to the recurrence of antagonism. This manifests itself as the formation of opposing democratic identities within a non-homogenous liberal democracy, as groups defined by social class, ethnic background, political ideology, or any other distinguishing feature, form in political opposition to one another. Schmitt and Mouffe both argue that the depoliticising, rationalistic and discussion-based politics of liberalism lacks the galvanising force of an actively polemical ideology that identifies an enemy to be destroyed.45

Schmitt’s own experience in Weimar Germany provides a clear example of how the descent of a liberal democracy into antagonism occurs. He identifies how the politically oriented “democratic” (by his definition) movements of communism and fascism emerged within the supposedly liberal-democratic states of Europe during the 1920s and 30s.46 Liberal-democratic institutions in this context, of the emergence of existentially opposed groups, simply acted as a thin veil for antagonistic struggle, as competing groups which were engaging in violent conflict on the streets also attempted to capture transient parliamentary majorities and destroy their enemies through (arguably) legal means.47 This concluded, of course, with the rise of fascism.

**C False Depoliticisation**

In the first instance, liberalism’s denial of the political fails to prevent the emergence of antagonism within the state. The other possible consequence, as identified by Schmitt, is a false depoliticisation which euphemistically renames the enemy and defines them as outside

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45 Schmitt, COP, 73-76; Schmitt, CPD, 75-76; Mouffe, *The Return of the Political*, 6-8.
46 Schmitt, COP, 74; Schmitt, CPD, 60.
humanity. Mouffe argues that such a renaming of the enemy is extant in contemporary liberal post-politics, a stultifying and oppressive depoliticisation that at its most successful manages to suppress dissenting views.

This manner of renaming the political can be dangerous and polemical in nature. The enemy is no longer considered to be a public enemy, and hence is without all the protections and status of the enemy as a category, which allows them to be repressed and eliminated in conflict under a different name. The dangers of such a euphemistic depoliticisation are exemplified in the treatment of Taliban prisoners by the US during the War on Terror. Giorgio Agamben, drawing on Schmitt, explores how the USA Patriot Act allowed the American Attorney General to take into custody any alien suspected of activities endangering the national security of the United States. For that period, the person taken into custody was not defined as the enemy, and in fact had their legal personhood entirely erased, producing “a legally unnameable and unclassifiable being.” The Taliban captured in Afghanistan did not have the status of prisoners of war, nor of criminals under American law, and so became the subjects of de facto rule. In not being defined as the enemy, the enemies of a liberal state are thus placed outside of any recognisable human category, which allows them to be apolitically stripped of their rights and subjected to ever greater potential abuses.

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48 Schmitt, COP, 79-79.
49 Mouffe, The Return of the Political, 2; Mouffe, For a Left Populism, 10-11, 15; Mouffe, The Challenge of Carl Schmitt, 3-4.
50 Schmitt, COP, 78-79.
52 Agamben, State of Exception, 3-4.
53 Schmitt, COP, 54, 78-79.
The enemy, in a depoliticised liberal state, is thus “no longer called an enemy but a disturber of peace and is thereby designated to be an outlaw of humanity.” This leads to the moral and legal justification, within liberalism, of the inhumane treatment of its enemies beyond the usual treatment of the enemy, and of placing them outside all domestic and international laws, simply because they have been given a different name.

III A Rawlsian Response?

This chapter has presented the essential Schmittian premise as follows. The political is defined by the inevitability of antagonism and its organisation by a “decisive entity” such as the state, which decides on the friend-enemy distinction. Liberalism, as a result of its individualism and rationalism, deliberately and consistently denies this possibility. On the one hand, thanks to the contradictions of liberal democracy, this can lead to antagonism and recurrent conflict. On the other hand, it can lead to an oppressive, euphemistic depoliticisation.

Having presented the Schmittian critique, I will now turn to the Rawlsian response. In the following chapter, Rawls’s engagement with antagonism, as evident in his *Political Liberalism* in particular, will be presented as an attempt to *acknowledge* and to *defuse* the political. In doing so, the contemporary situation which appears to possess many of the characteristics of a recurrence of the political, will also be outlined, and a genuinely liberal and democratic response to a crisis of liberal democracy will be considered.

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54 Schmitt, COP, 79.
Chapter 2  A Rawlsian Response to Antagonism

Rawls, in *Political Liberalism*, is responding to the following problem. How can we maintain a stable agreement on the principles governing the most basic political institutions, while allowing for disagreement on almost anything else? How can we have a well-ordered society within which people affirm a variety of comprehensive moral doctrines, holding widely disparate views as to religion, philosophy and morality, yet maintain a consensus as to the political principles of justice?\(^1\) Is it possible, for example, for a conservative Christian and a Kantian liberal to participate in the same liberal democracy as a fair system of cooperation?\(^2\)

In Rawls’s response to these questions we can also see a clear address to the issues raised by Schmitt’s critique of liberalism, as presented in the previous chapter. Is it possible to avoid antagonism without the oppressive imposition of stability? Can liberalism escape what Schmitt sees as its two inevitable fates: chaotic antagonism or false depoliticisation? Is there any hope for a stable and just liberal democracy?

Rawls argues that it is, in fact, possible to have both pluralism and stability. His conclusion is that we can have a stable and just liberal-democratic society where all “reasonable” comprehensive doctrines (including the religious, philosophical, metaphysical etc.) agree on the principles of justice that govern the most fundamental political, social and economic institutions. This “overlapping consensus” is a possibility because citizens come to affirm a political conception of justice, along with conceptions of themselves as free and equal, and of society as a fair system of cooperation.

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\(^1\) Rawls, TOJ, 7; Rawls, PL, xvi-xvii, 154-155, 258.
\(^2\) Rawls, PL, 144-145.
This chapter will explore the central mechanisms for stability in Rawls’s theory as presented in *Political Liberalism*. Rawls, I will argue, provides a convincing response to the problem of stability based on the overlapping consensus of reasonable comprehensive doctrines. However, at the centre of this overlapping consensus, and thus also of the stability of the Rawlsian ideal, is the concept of reasonableness. This particular characteristic of citizens in a well-ordered society, which entails a certain reciprocity and willingness to acknowledge the burdens of judgement, is necessarily imparted to a majority of citizens in society in order to allow for an overlapping consensus to obtain.

Building from Rawls, the question I want to pose is the following: what does a well-ordered society have to say in response to the unreasonable? The unreasonable, who are not willing to propose and honour fair terms of cooperation, do not recognise the burdens of judgement and are willing to use political power to suppress their opponents, will be identified as the central threat to Rawlsian stability. The rise of the unreasonable, which appears to be characteristic of our own contemporary crisis of liberal democracy, will be conceived of as a recurrence of the Schmittian political.

What comes to the fore in this chapter is, therefore, the problem of what Rawls can say to those who are unreasonable. The unreasonable are, in a sense, the enemy of Rawlsian liberalism, and they are the central threat to its stability. Ultimately, it becomes evident that the most important response that Rawls has to the unreasonable is the educative function of the political conception, and the possibility of developing a sense of justice based on reciprocity. This will lead into the discussion of Rawls’s moral psychology in Chapter 3.
The overall purpose of these two chapters will be to inquire as to how political liberalism can address the important challenges raised by Schmitt. Ultimately, to return to the initial aim of this thesis, I intend not merely to present an author study of Schmitt or Rawls, but rather to use these two thinkers, who seem particularly relevant to our own times, to address the crisis of stability facing liberal democracy today.

I The Limits of Political Liberalism

Rawls’s fundamental argument is that the two principles of justice as fairness, first outlined in *A Theory of Justice* and then reaffirmed in *Political Liberalism*, are able to form the basis for a reasonably just political society that is both pluralistic and stable.³ These principles are as follows. First, each person is to have an equal claim to a fully adequate scheme of equal basic rights and liberties compatible with the same scheme for all (equal liberty). Second, social and economic inequalities are only permissible if they are (a) attached to positions and offices open to all under conditions of fair equality of opportunity (equality of opportunity) and (b) they are to the benefit of the least advantaged members of society (the difference principle).

³ Rawls, PL, xvii, lx, 5-6.
⁴ Rawls, TOJ, 302; Rawls, PL, 5-6.
⁵ Rawls, PL, 141.
⁶ Rawls, TOJ, 455-459; Rawls, PL, 140-144.
then it will be possible to articulate an effective response to the ever-recurring threat of antagonism.

To lay out the argument for stability in *Political Liberalism*, we must first explain Rawls’s circumscription of the scope of justice as fairness to the “political” as its own specially demarcated domain. This is fundamental to the changes made by Rawls from *Theory* to *Political Liberalism*, and leads into Rawls’s arguments concerning reasonable pluralism. It also leads us to engage with the initial Schmittian critique that any attempt to allow for genuine pluralism in a democratic state will fundamentally lead to the emergence of antagonism.

However, in discussing Rawls’s reasonable pluralism, it becomes clear that this is not an absolute pluralism but rather limited to certain types of comprehensive doctrine: that is, *reasonable* comprehensive doctrines. This avoids unrestricted pluralism and wards off, to an extent, the Schmittian critique concerning liberal-democratic instability. However, the possibility of reasonable pluralism also rests on certain assumptions of Rawls’s ideal theory. This leads to further Schmittian, and more widely, realist and other criticisms of Rawls which must be noted and addressed. The fundamental issue that emerges is that the well-ordered society is only stable as long as all or at least the great majority of citizens espouse reasonable comprehensive doctrines. This reasonableness is how the overlapping consensus is maintained and so, in a contemporary world characterised by increasingly unreasonable doctrines, our question will be whether and how Rawls continues to speak to the realities of liberal-democratic politics.

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7 Rawls, PL, 11-13, 175-176.
8 Rawls, PL, xxxvi-xxxvii.
9 Schmitt, COP, 78; Schmitt, CPD, 26.
10 Rawls, PL, 35-38.
11 Sleat “Introduction,” 3-4; Geuss, *Philosophy and Real Politics*, 6-10; Williams, *In the Beginning there was the Deed*, 1-3.
Rawls explicitly limits his focus in *Political Liberalism* to the “political”, a term used by him to refer to a sphere of activity pertaining only to those fundamental principles that govern the basic structure of society.

The “basic structure” is comprised of the most essential political, social and economic institutions that determine the rights and duties of citizens, their self-conception and their life prospects, as well as the way in which these institutions fit together into a unified system of social cooperation. This concept is at times vague. However, briefly outlining some of the issues that either do or do not belong to the realm of the political helps to clarify the precise nature of this limitation. Questions regarding the constitutional essentials of a nation-state are considered political. Questions concerning personal desires, of the good life in a more general sense, are not. Questions concerning which forms of property are legally recognised, and the ways in which the economy is organised at its most basic level are political. Questions of religious doctrine and practice are not.

Rawls distinguishes his “political” liberalism from what he terms a “comprehensive doctrine”. A comprehensive doctrine refers to a coherent system of moral views addressing a wide (and possibly universal) range of subjects including moral questions of individual, familial and associational virtue, as well as religious and metaphysical questions, all of which go beyond the basic structure of society. The more limited “political” doctrine that Rawls lays out, which advocates for the political conception of justice as fairness, answers a much more limited set of questions, such as which principles should be enshrined in the constitution, how the basic

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12 Rawls, PL, 11-13, 175-176.
13 Rawls, PL, 11-12 155, 258.
14 Rawls, PL, 13, 175.
aspects of the economic system should be organised, and how the most basic social rights, duties and prospects should be determined.\textsuperscript{15}

An important terminological difference between Rawls and Schmitt must be noted here. Schmitt refers to the “political” as a category that is potentially separate from the moral and defined by the possibility of antagonism, while Rawls uses it to designate a particular, limited realm of moral questions pertaining only to the most basic institutions of society. This reflects their broader disagreement as to the nature of politics and the task of political theory. However, it does not necessarily mean that they do not address the same fundamental issues and questions of political life. Indeed, I believe they do, and much of the work of this thesis consists of showing how, despite their widely different perspectives and assumptions, Schmitt and Rawls are attempting to address recognisably similar issues and problems.

For the moment, however, allow me to stay with Rawls. His reduction of the scope of Political Liberalism to the “political” as conceived above, is a major change from A Theory of Justice. In Theory, Rawls himself later acknowledged, he was arguing that every individual in a well-ordered society would come to affirm the same comprehensive moral doctrine, one centred on the two principles of justice as fairness (along with his broadly Kantian interpretation of them).\textsuperscript{16} This argument, premised on all citizens coming to see a congruence between their conception of the right and of the good, was seen by the later Rawls as ill-founded – “unrealistic”, Rawls says in his Introduction to Political Liberalism\textsuperscript{17} – because it either ignored, or justified the suppression of, reasonable pluralism.\textsuperscript{18} Reasonable pluralism is, as

\textsuperscript{15} Rawls, PL, 13, 175-176.
\textsuperscript{17} Rawls, PL, xvi.
\textsuperscript{18} Rawls, PL, xvii; Weithman, Why Political Liberalism, 96.
Rawls emphasises, both a fact of democratic society and something that is necessary in order to maintain the liberal conception of citizens as free and equal. Imposing a single comprehensive doctrine is only made possible by the oppressive use of state power.\textsuperscript{19} These two “facts”, of reasonable pluralism and of oppression, render the limitation of Rawls’s liberalism to the realm of politics vital in allowing for a genuinely liberal and genuinely democratic response to the threat of antagonism.

The fact of oppression is something that both history and Schmitt himself attest to. From the violence and oppression of the Inquisition of the Middle Ages,\textsuperscript{20} to the totalitarian regimes of the mid-20th century,\textsuperscript{21} historical attempts to impose a single comprehensive doctrine on an entire populace have led to oppression and brutality as internal enemies are necessarily identified and destroyed. Attempting to impose a single universal comprehensive doctrine (creating the homogeneity that Rawls himself recognised was a necessary assumption for stability in Theory),\textsuperscript{22} far from defusing the possibility of antagonism, in fact, leads to an entirely new series of internal enemies being identified and potentially persecuted.\textsuperscript{23}

While Rawls recognises that attempts to impose a single comprehensive doctrine lead to oppression, and thus confines his conception of justice in Political Liberalism to a more limited subset of questions, Schmitt argues that such imposed homogeneity, regardless of oppression, can be the only way to ensure stability within a nation-state. Reaffirming his belief that the antagonism at the core of the political is unavoidable, Schmitt argues that, in order for a democracy to survive, its population must be homogenous. In order to have a stable democracy

\textsuperscript{19} Rawls, PL, 37.

\textsuperscript{20} Rawls, PL, 37.


\textsuperscript{22} Rawls, PL, xvi-xvii; Paul Weithman, Why Political Liberalism, 96.

\textsuperscript{23} Schmitt, COP, 78-79.
the people must already “think democratically” and share the same democratic identity.\textsuperscript{24} Diversity necessarily leads to the recurrence of the political as groups develop hostile relationships to one another.\textsuperscript{25} A liberal-democratic state which attempts not to impose a single comprehensive view on the entire populace, such as that proposed by Rawls, merely cedes the terrain of political conflict to more actively polemical views.\textsuperscript{26} Thus, Schmitt argues that plural liberal-democratic states inevitably lead to the emergence of antagonism and of transient tyrannies of the majority, as in its attempts to maintain pluralism, liberalism essentially provides a legal façade for violent political conflict.\textsuperscript{27}

The only response, in Schmitt’s view, to the risks of pluralism is the necessary imposition of order by an authoritative sovereign state. Establishing such a decisive political decisionmaker, whether through a form of “anti-parliamentary caesarism”, a plebiscitary democracy, a dictatorship, or some form of mythic nationalism (essentially fascism), is the only way to quash pluralism, identify external and internal enemies in order to allow the political group to cohere, and thus avoid the recurrence of the political.\textsuperscript{28} Schmitt himself, in both his writings and his political actions, ultimately supported authoritarian nationalism as the best solution to the problem of antagonism. This is reflected first in Schmitt’s praise for the Italian Fascists and ultimately in his support of the German National Socialists.\textsuperscript{29}

\textsuperscript{24} Schmitt, CPD, 9-11, 27.
\textsuperscript{25} Schmitt, CPD, 9, 26; Mouffe \textit{The Democratic Paradox}, 4-6, 53-57; Mouffe, \textit{For a Left Populism}, 14-15.
\textsuperscript{26} Schmitt, CPD, 13.
\textsuperscript{27} Schmitt, \textit{Legality and Legitimacy}, 30-31.
Schmitt and Rawls both recognise that attempts to quash pluralism lead to oppression. Schmitt, on this basis, justifies oppression because he notes that pluralism will lead inevitably to antagonism. Better authoritarianism, he concludes, than civil war. Rawls does not justify oppression. However, this does not mean that Rawls denies that pluralism can lead to antagonism. Rather, in another striking instance of agreement, Rawls states in almost Schmittian language that pluralism in an unrestricted sense – that is, as allowing for both reasonable and unreasonable doctrines – can lead to “doctrines that are not only irrational but mad and aggressive”. Such unrestricted pluralism is something to be avoided by reason of the risk of violent conflict that it entails.

The risks of unrestricted pluralism, as Rawls and Schmitt both present them, are evident in the contemporary political context. From the violent clashes between far-right nationalists and anti-fascist protestors in Charlottesville in the United States and political violence used by Nicolas Maduro in response to widespread protests in Venezuela, to the political paralysis of the British parliament in the face of the fragmenting of its major parties over fundamental political disagreements concerning Brexit, pluralism and attempts to assert pluralism appear to be leading once again to antagonism.

The question, therefore, is what does Rawls actually suggest as a response to the risk of antagonism? How does it come to pass that Schmitt and Rawls agree on the fact of oppression and the risks of pluralism and nevertheless disagree on the necessary response? The important

30 Rawls, PL, 144.
distinction to be made here is between Schmitt’s “pluralism”, which Rawls would associate with unrestricted pluralism and Rawls’s favoured and more limited “reasonable pluralism.” Recognising the risks of antagonism, Rawls advocates for neither absolute pluralism nor absolute homogeneity, but rather a pluralism of reasonable comprehensive doctrines, which allows for the development of an overlapping consensus on certain principles of justice.\(^{34}\) The concept of “reasonableness” must be explained in substantial detail in order to elucidate the nature of this pluralism and thus spell out the possibility of a Rawlsian response to Schmitt’s critique. This leads us naturally to a discussion of Rawls’s ideal theory and the possibility of a “well-ordered society” that provides the first aspects of a genuinely Rawlsian response to the possibility of antagonism.

### II The Reasonable and Ideal Theory

Having identified the limited nature of Rawls’s task in *Political Liberalism*, and his emphasis on “reasonable pluralism”, we must consider how it is that Rawls conceives of this reasonable pluralism, and whether it actually provides a response to the problem of antagonism. It is on the basis of reasonable pluralism that Rawls builds the argument for an overlapping consensus and thus the stability of the well-ordered society.

The central concept here is, importantly, one of “reasonableness”. The well-ordered society exists in circumstances of reasonable pluralism, wherein reasonable citizens affirm reasonable comprehensive doctrines which then generate a consensus as to the basic principles of justice that govern their well-ordered society.\(^{35}\) The next important step in establishing a Rawlsian response to antagonism is, therefore, to establish what Rawls means when he says

\(^{34}\) Rawls, PL, 36.  
\(^{35}\) Rawls, PL, 66, 144-145.
“reasonable”, and subsequently to determine whether the assumption of reasonableness that underpins the stability of his ideal is well-founded.

_A The Reasonable_

Reasonableness, Rawls emphasises, is a fundamental aspect of his “political conception of the person”, or more aptly the citizen in his well-ordered society. Each citizen of Rawls’s well-ordered society is regarded as free and equal, rational and reasonable, and possessing the capacity for a sense of justice and a conception of the good. This is not a metaphysical statement as to the actual nature of humanity. Rather, Rawls’s conception of the citizen lays out a number of key assumptions underpinning his ideal theory, while also identifying a political conception of how citizens in existing democratic societies can and possibly do see themselves.

Reasonable citizens have two characteristics. The first is a willingness to propose and honour fair terms of cooperation. The second is a willingness to recognise the burdens of judgement and to accept their consequences.

The first aspect of being reasonable is a willingness to propose and honour fair terms of cooperation. This means that citizens are able and willing to go to others, propose basic principles to govern their political, social and economic interactions (principles of justice are one example) and ultimately accept and abide by the rules of cooperation that are agreed upon. For example, it would be reasonable, in the context of a political debate between two

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38 Rawls, PL, 48-49.
39 Rawls, PL, 50, 52.
people, for one person to suggest that during the debate they will not deliberately tell lies. If the other person accepts this fair term of cooperation, then they must both be willing to honour this principle, and not tell lies over the course of the debate. This entails a basic reciprocity that lies at the heart of Rawls’s concept of reasonableness. It is unreasonable to be unwilling to propose any fair terms of cooperation at all, or to propose terms only as a necessary pretence that one is happy to break.\(^{40}\)

Thus, reasonable citizens are assumed, in the ideal of a well-ordered society, to be willing to suggest fair terms of cooperation and to abide by them. They are also willing to accept the burdens of judgement, the second aspect of reasonableness. The burdens of judgement are the “many hazards in the correct exercise of our powers of reason and judgement in the ordinary course of political life”. These hazards include complexities of evidence, disagreement as to the weight to be given to certain considerations, vagueness in political and moral concepts, the impact of one’s life experience and decisions, and more generally the fact that difficult decisions often have no clear answer.\(^{41}\) In short, the burdens of judgement refer to all of those factors that can lead two people, no matter how reasonable, to disagree when it comes to an important question. To accept the burdens of judgement reflects a willingness to accept that you can be wrong. From this flows a tolerance of those who disagree with you.\(^{42}\)

On the basis of these two features, Rawls claims that reasonable citizens will affirm only reasonable comprehensive doctrines. These are “comprehensive” as opposed to “political” because they address a wide range of religious, philosophical, moral and other questions, prioritising values and balancing between them. However, in being reasonable, they are not

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\(^{40}\) Rawls, PL, 50.

\(^{41}\) Rawls, PL, 56-57.

\(^{42}\) Rawls, PL, 58.
fully comprehensive, as they recognise the possibility of change and are mutable. This is because, once again, they are the doctrines affirmed by reasonable people, who are willing to cooperate with others and recognise that they could be wrong. Flowing from this, reasonable doctrines also consider it to be unreasonable to use political power to repress the reasonable comprehensive views of others with whom they merely disagree.

It is this final aspect of reasonable comprehensive doctrines - their recognition that it is unreasonable to repress the views of others that are not themselves unreasonable - that allows Rawls to imagine a pluralism that is fundamentally different to the picture painted by Schmitt. Schmitt’s picture of pluralism, populated by existentially opposed enemies who are willing to use state power and physical violence to confront, suppress and negate one another, is drawn from his fundamental conviction as to the antagonistic nature of the political, and the naivety of any hope for better. Rawls’s argument for reasonable pluralism would thus be dismissed by Schmitt (and is in fact dismissed by contemporary “realists”) as an optimistic Kantian pipe dream. This leads us into a broader critique of ideal theory and the fact that Rawls, in his arguments concerning stability, still appears to be working in ideal – that is to say, unrealistically utopian – conceptions.

B Concerning Ideal Theory

The assumption that citizens are reasonable and hence that they affirm reasonable comprehensive doctrines is fundamental to the possibility of Rawls’s reasonable pluralism. It is also, as will be explored below, foundational to the establishment of an overlapping consensus. Rawls’s assumption that everyone in a polity is a reasonable citizen is a

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43 Rawls, PL, 59.
44 Rawls, PL, 60.
45 Schmitt, COP, 58-59; Geuss, Philosophy and Real Politics, 57-60.
fundamental aspect of his ideal theory, situating his arguments for stability in a well-ordered society that is already just. This potentially limits the realistic application of his arguments in a contemporary situation which is often far from ideal.

Rawls engages in both pure ideal theory, whereby he presents an (admittedly) aspirational theory that provides the aim for a desire for change, and also in non-ideal or quasi-ideal theory.\textsuperscript{46} The former assumes strict adherence to the principles of justice as well as complete reasonableness. The latter attempts to engage in a more realistic assessment of the possibility of political liberalism within the plausible, yet still reasonably favourable, conditions of a functioning constitutional democracy. Rawls believes, or at least hopes, that in such quasi-ideal circumstances where he admits the existence of unreasonable citizens and doctrines, there would still be more reasonable than unreasonable views affirmed.\textsuperscript{47}

The critical literature on Rawls is vast and several scholars have criticized both his ideal and quasi-ideal theory. In this thesis I will address aspects of the realist critique by such thinkers as Raymond Geuss and Bernard Williams, inspired by Schmitt, who claim that ideal theory is not an apt way to respond to questions of power, stability and security, which are better approached through the lens of the real practice of politics.\textsuperscript{48} This critique will be addressed in my arguments concerning how Rawls, in addition to presenting his ideal, also provides us with a diagnosis of, and a framework for responding to, the contemporary situation that is far from ideal.

\textsuperscript{46} Rawls, PL, 285.
\textsuperscript{47} Rawls, PL, 65, 155.
\textsuperscript{48} Williams, \textit{In the Beginning there was the Deed}, 1-2; Geuss, \textit{Philosophy and Real Politics}, 6-10.
That said, this thesis will not address substantially the critiques made from post-colonial and race-based perspectives, such as that of Charles Mills, who argues that ideal theory by its very nature presupposes a society without deep historical injustice (such as racial injustice) and thus cannot address some of the most significant forms of oppression. \(^49\) Neither will I engage with feminist critics such as Susan Okin, who argues that Rawls's theory must focus more substantially on issues of gendered injustice. \(^50\) This thesis, rather, will focus on the Schmittian and thus realist critique and suggest in a more limited sense how Rawls can provide a (relatively) just response to the recurrence of antagonism.

Recognising the limitations of ideal theory, and also recognising a need to make this ideal theory more congruous with “reality”, we can now turn to the contemporary situation. The present-day condition of liberal democracies, it would appear, is headed in the opposite direction to the assumptions of Rawlsian reasonable pluralism. In fact, a “return of the unreasonable” seems on the horizon.

\textit{C. Actually Existing Reasonableness and the Return of the Unreasonable}

Reasonable pluralism, a central aspect of Rawls’s ideal theory, is, to the extent that it has been established, currently under threat in many contemporary liberal democracies. To demonstrate this return of the unreasonable I will briefly outline an actually existing example of reasonable pluralism, as opposed to unrestricted pluralism, in order to clarify the concept. Subsequently, I will characterise the contemporary crisis of democracy as a resurgence of unreasonable doctrines.


The contrast between unrestricted and reasonable pluralism can be made between Schmitt’s Weimar Germany, torn apart by antagonism, and the contemporary Federal Republic of Germany. Modern Germany, although it is seeing a re-emergence of extreme parties, enjoys a generally peaceful agreement between the major political parties that they will not suppress one another. The two largest political parties, the Catholic Democratic Union (CDU) and the Socialist Party of Germany (SPD), do not attempt to outlaw one another despite their political differences, and their supporters do not engage in violent warfare on the streets. In fact, there is currently a governing “grand coalition” between the CDU and SPD.\(^{51}\) Rawls’s faith in the possibility of reasonable pluralism may not, as the Schmittian critique would indicate, be quite so fanciful.

However, in identifying what is perhaps a limited example of actually existing reasonableness in Germany (and to be clear, this is evident in Australia as well) it also becomes evident that throughout the liberal-democratic world this supposed “reasonableness” appears to be in decline. Are we seeing a return of the unreasonable and a collapse of liberal stability?

Rawls does not provide a positive definition of the term “unreasonable” in *Political Liberalism*. It is defined primarily in contrast with what is reasonable, but this still allows us to trace out some of its basic characteristics. Unreasonable doctrines do not extend reciprocal and fair terms of cooperation. Nor are they likely to admit the burdens of judgement. They are willing to use coercive political power to suppress the liberty of conscience and freedom of thought of their opponents and deny the basic principles of the political conception of justice.\(^{52}\)


\(^{52}\) Rawls, PL, 60, 64-65.
Rawls recognises that there will always be such views. However, he emphasises that the stability of political liberalism rests on the unreasonable being containable, and not strong or popular enough to undermine the substantive justice of a regime.\textsuperscript{53} If unreasonable doctrines and citizens become significant enough to destabilize an overlapping consensus of reasonable doctrines and citizens, then unfettered pluralism may well return. In such a situation we may find ourselves a situation highly reminiscent of the Schmittian political, as unreasonable doctrines achieve power and engage in antagonistic struggle against one another.

The liberal-democratic world is currently in what some would call a “populist” moment and I will conceive of in this thesis as a return of the unreasonable.\textsuperscript{54} There are countless examples from around the world. Donald Trump has engaged in polemical attacks on opponents, calling the media the “enemy of the American people”, questioning the legitimacy of elections, judges and political opponents, cutting federal funding to major cities in response to political disagreements and engaging, at the very least, in rhetoric that would be considered unreasonable.\textsuperscript{55} On a broader level (and perhaps indicating the deeper roots of contemporary unreasonableness) in the American context, over the past fifty years the Republican Party has “frequently and deftly employed election law and procedures” to win elections, and suppress voters who tend to support their opponents.\textsuperscript{56} In countries including Hungary, Poland, Turkey and Venezuela governments have used political power in order to suppress opposing views. Political parties expressing unreasonable views have made substantial electoral gains in Austria, France, Germany and the Netherlands, traditionally seen as stable liberal

\textsuperscript{53}Rawls, PL, 64-65.
\textsuperscript{54}Mouffe, \textit{For a Left Populism}, 11-12; Levitsky and Ziblatt, \textit{How Democracies Die}, 2.
\textsuperscript{55}Levitsky and Ziblatt, \textit{How Democracies Die}, 186-188.
democracies. The unreasonable, and hence the possibility of antagonism that haunts the political, appear to be making a return.

This apparent recurrence of unreasonableness ensures that the limitations of ideal theory must be kept in mind in the discussion of the overlapping consensus which is to follow. The overlapping consensus is the central mechanism for the stability of the well-ordered society in *Political Liberalism*. It is, however, unlikely that even an approximation of the overlapping consensus can obtain in a society where unreasonable doctrines are supported by a substantial proportion of the citizenry.

Despite these limitations that must be kept in mind in the section that follows, in explaining the overlapping consensus, two important concepts will come to the fore. The first is the potential of accepting principles of justice as the basis of a mere “modus vivendi”, a necessary compromise that Rawls argues can develop into a genuine overlapping consensus. The second is the educative role of a political conception of justice, even in an imperfect society, which leads to the central argument of the following chapter. Thanks to the resurgence of unreasonable doctrines, an overlapping consensus may well be a utopian aspiration. Nevertheless, as I will make clear, it provides a goal towards which liberal democracy can aim, acts as an aspect of the political conception that allows citizens to develop a requisite sense of justice, and ultimately establishes the stability of a society where a majority of citizens affirm reasonable doctrines.

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III Overlapping Consensus

Rawls’s primary argument for the stability of the well-ordered society in *Political Liberalism*, replacing the “congruence argument” from *Theory*, is the overlapping consensus.\(^{58}\) Proceeding from the pluralism of reasonable comprehensive doctrines, Rawls argues that, beyond not repressing other reasonable views, reasonable comprehensive doctrines in a well-ordered society would come to be part of an overlapping consensus as to the political conception of justice, with each citizen wholeheartedly supporting the governing principles from within their own comprehensive doctrine.\(^{59}\)

As noted above, the political conception of justice is limited to the principles that govern the basic structure. This limitation, Rawls claims, means that these principles can become part of any variety of comprehensive belief systems. Indeed, he speaks of the relationship of the political conception to comprehensive doctrines as a “modular” component.\(^{60}\) Thus, whether one is a (reasonable) Christian, Kantian, Buddhist, or whatever else, Rawls argues that it is possible and desirable to affirm a liberal political conception of justice.\(^{61}\) A Christian, for example, would accept the political conception from within their comprehensive doctrine, seeing it as part of their own version of reasonable Christianity (for example, as institutionalising core Christian values of care and charity). This allows them to wholeheartedly affirm the principles of justice from within their comprehensive doctrine.\(^{62}\)

If the overlapping consensus obtains then there would be just stability. All (if in ideal theory) or a substantial majority (in quasi-ideal theory) of the comprehensive doctrines affirmed by the

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\(^{59}\) Rawls, PL, 144-145.

\(^{60}\) Rawls, PL, 144-145.

\(^{61}\) Rawls, PL, 144-145.

\(^{62}\) Rawls, PL, 169.
citizens of a well-ordered society would support the basic principles of justice and the
institutions that implement them.⁶³ Because these comprehensive doctrines are reasonable and
have an overlapping allegiance to the liberal principles of justice, political repression of the
kind imagined by Schmitt no longer appears to be necessary to stabilize a democratic regime.
Citizens commit to democratic institutions on their own and from within the reasons and
worldview of their comprehensive doctrines. They do not need to be compelled.⁶⁴

A perfectly realised overlapping consensus is an object of ideal theory and hence something
that will never be fully attained. The true value of Rawls’s account of the overlapping
consensus lies in providing an ideal to work towards, as well as mapping out a way in which a
society can develop in the direction of this ideal, becoming more just and more stable in the
process.⁶⁵ This is expressed effectively in Rawls’s account of how principles of justice can
come first to be the basis of a “modus vivendi”, a necessary compromise that subsequently
develops into a constitutional consensus limited to the political institutions, and ultimately
towards a fully-fledged overlapping consensus extending to all parts of the basic structure. This
account also highlights the centrality of Rawls’s moral psychology.

A From Modus Vivendi to Overlapping Consensus
Principles of justice are, Rawls notes, often first accepted by virtue of a modus vivendi, a
necessary compromise between particular groups as to which principles will govern their
interactions. What makes this kind of agreement a modus vivendi rather than principled
commitment is that it is akin to a treaty between warring states rather than a genuine consensus.
Citizens support the modus vivendi out of necessity, not as the result of a wholehearted

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⁶³ Rawls, PL, 142-144.
⁶⁴ Rawls, PL, 169.
⁶⁵ Rawls, PL, 168.
allegiance to the principles from within their own comprehensive doctrines. Although it is not a sufficient basis for the genuine stability of a just society, a modus vivendi is the first step towards a constitutional consensus, and eventually an overlapping consensus of reasonable comprehensive doctrines.  

Rawls explains the emergence of a modus vivendi over a liberal conception of justice by using the example of religious toleration that emerged following the religious wars of the Reformation. The first step was one of necessity. The emergence of Protestantism led to violent struggles throughout Europe, the intractability of which forced both Protestants and Catholics to accept the principle of religious toleration in order to restore and then maintain the peace. Within early modern European societies, therefore, both Protestants and Catholics accepted that they necessarily needed to tolerate the other as a modus vivendi.

Rawls’s argument, however, is that once the principle of toleration was accepted as the basis of this necessary compromise, over time it came to be the subject of a constitutional consensus and (arguably) an overlapping consensus of reasonable comprehensive doctrines. One sees this transformation from the initial and uneasy acceptance of toleration in the sixteenth century, moving towards an enshrined and generally accepted constitutional consensus concerning religious toleration and freedom of religion that is manifest in most modern liberal democracies, and finally to an overlapping consensus of reasonable comprehensive views in modern societies that accept religious toleration as extending to the basic economic, social and political structure as a whole.

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66 Rawls, PL, 158.
67 Rawls, PL, 159.
68 Rawls, PL, 159.
69 Rawls, PL, 148.
70 U.S. Const. Amend.1.
The process of developing this overlapping consensus, which Rawls identifies as having occurred historically, depends on two key mechanisms. The first is the adoption of the idea of public reason, which requires a particular language of norm justification: while important to Rawls’s later work, this will not be central to my thesis. The second is the operation of the political conception in its educative function, based on Rawls’s reasonable moral psychology, which I will argue is the most important aspect of political liberalism in allowing for the development of a modus vivendi to an overlapping consensus. As institutions become more just, citizens develop a reciprocal allegiance to the principles of justice, and ultimately revise their comprehensive doctrines to become more reasonable. This allows for an overlapping consensus to obtain. It is also the most compelling response that Rawls has to the problem of unreasonable citizens. This moral psychology is the subject of my next chapter, after which I will revisit the process by which a modus vivendi could develop into a robust overlapping consensus and serve to stabilise liberal democracies in these turbulent times.

71 Rawls, PL, 159-160.
73 Rawls, PL, 160-168.
Chapter 3 Rawls’s Moral Psychology and a Sense of Justice

The purpose of this thesis is to determine whether Rawls can provide a liberal-democratic response to the possibility of antagonism that is both stable and just. Schmitt’s sharp critique of liberal democracy, as either ignoring or renaming the political, led us to focus in Chapter 2 on the institutional mechanisms for stability at play in Rawls’s well-ordered society, foremost of which is his notion of overlapping consensus. An overlapping consensus built on reasonable pluralism attempts to address the problem of stability and thus engage substantively with the problem of antagonism.

The possibility of reasonable pluralism and the stability of an overlapping consensus are both, however, reliant on a compelling account of how justice as fairness can encourage citizens to become reasonable. Why, Rawls asks, is it a good thing to be just? Why should we as people and citizens want to be reasonable? The present chapter addresses these questions by examining Rawls’s moral psychology, and in particular, his arguments about the development of what he calls a “sense of justice” in a well-ordered society.

Rawls’s moral psychology is expressed most comprehensively in Part III of Theory, with certain important additions and clarifications in Political Liberalism.¹ I will argue that Rawls’s moral psychology, which is central to his response to Schmitt, provides a compelling argument as to how we can establish a more just and more stable society. Even in an imperfectly ordered society, institutions that reflect the principles of justice as fairness will appeal to a felt desire for reciprocity and the primary good of self-respect. These principles, we will see, align with the democratic values of liberty, equality and fraternity, and provide the best expression of the

¹ Rawls, TOJ, 453, 512.
democratic ideal of citizens as free and equal, reasonable and rational, and of society as a fair system of cooperation. This appeal to core democratic values, which Rawls believes are already widely embedded in the public culture of mature liberal democracies, allows him to engage with the problem of unreasonable comprehensive doctrines.\(^2\)

### I Rawls’s Moral Psychology

In several places in his work Rawls observes that political regimes can be made stable in two different ways. The first is external and requires a decisive political power to keep citizens in line and orderly. Such a solution is characteristic of Hobbes’s political philosophy, as well as Schmitt’s.\(^3\) The second, favoured by Rawls as “stability for the right reasons”, is internal and involves the commitment of citizens to the principles of the political regime. Here, citizens support the regime not because of some external power, but because they want to: it is a felt desire and sentiment on their part. That is why, when Rawls poses the question of stability in *Political Liberalism*, he inquires as to “whether people who grow up under just institutions (as the political conception defines them) acquire a normally sufficient sense of justice so that they generally comply with those institutions?”\(^4\)

A sense of justice refers to the moral commitment of citizens to the principles of justice as fairness as the best expression of their ideal of citizenship and a concomitant desire to act upon these principles.\(^5\) Developing a sense of justice leads the citizens of a well-ordered society to comply with the just arrangements of that society.\(^6\) Developing a sense of justice also leads the

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\(^2\) Rawls, “Political not Metaphysical”. 225; Rawls, PL, 175.


\(^4\) Rawls, PL, 140-144.

\(^5\) Rawls, TOJ, 474, 476; Rawls, PL, 84-85, 141.

\(^6\) Rawls, PL, 141.
individual citizen to desire to be reasonable, and affirm doctrines that can be part of the overlapping consensus as explored in the previous chapter.\(^7\)

To develop his theory of moral psychology, Rawls draws principally on the work of Jean-Jacques Rousseau, Jean Piaget and Lawrence Kohlberg to identify the development of a sense of justice in a well-ordered society through three stages: (1) the morality of authority, (2) the morality of association and (3) the morality of principles.\(^8\) In this he attempts to span the empiricist tradition associated with Hume and Freud, which emphasises the importance of moral training and supplying missing motives, and the rationalist tradition of Rousseau and Piaget, which expresses moral development as the free growth of innate and natural intellectual and emotional affinities.\(^9\) At each level there is an operative ‘psychological law’, which describes a change in the final ends of an individual’s rational life plan and accounts for how desires come to be transformed.\(^10\)

At the heart of Rawls’s moral psychology is what he calls the “deep psychological fact” of reciprocity: a tendency to answer in kind.\(^11\) This refers to the fact that active sentiments such as love and friendship, including the sense of justice, “arise from the manifest intention of other persons to act for our good.”\(^12\) Rawls considers reciprocity to be something so fundamental to humanity, so important to the possibility of human sociability, that to deny it – that is, to raise children and educate adults so that it is not prominent in their psychical life – ultimately distorts one’s humanity to the extent that, in a sense, it mutilates the self.\(^13\) Reciprocity is seen as a

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\(^7\) Rawls, PL, 86.
\(^8\) Rawls, TOJ, 461-462.
\(^9\) Rawls, TOJ, 458-459, 495.
\(^10\) Rawls, TOJ, 495.
\(^11\) Rawls, TOJ, 494.
\(^12\) Rawls, TOJ, 494.
\(^13\) Rawls, TOJ, 494-495.
natural aspect of being human and justice as fairness is given a foundation deep in human
nature itself.\(^\text{14}\)

Along with the “fact” of reciprocity, Rawls emphasises the role of what he calls the “primary
good” of self-respect or self-esteem.\(^\text{15}\) Self-respect refers to every person’s sense of their own
value, our belief that our life’s plan is worth carrying out, and faith in our ability to fulfil our
intentions. The benefits that come from obtaining self-respect include a confidence in our
ability to fulfil those intentions, a sense of self-esteem and of the esteem of those around us
and, based on what Rawls calls the “Aristotelian Principle” the pleasure that comes from
exercising and potentially excelling in the exercise of natural capacities.\(^\text{16}\)

The importance of self-respect to Rawls’s theory (and hence, to his conception of a just society)
cannot be overstated. Without a sense of self-respect, life may no longer seem worthwhile.\(^\text{17}\)
When we experience a blow to self-respect, we experience the feeling (sometimes natural,
sometimes moral) of shame, which Rawls characterises as the painful loss of a primary good.\(^\text{18}\)
Feelings of shame, occasioned by a loss of self-respect, are also often accompanied by (but
clearly distinct from) feelings of guilt, which come from acting contrary to our sense of right
and justice. Both feelings of shame and guilt are powerful motivating factors in ensuring moral
action.\(^\text{19}\)

\(^{14}\) Rawls, TOJ, 500-501; Gališanka, *The Path to a Theory of Justice*, 133-134.
\(^{15}\) Rawls, TOJ, 440-442, 501.
\(^{16}\) Rawls, TOJ, 440-441
\(^{17}\) Rawls, TOJ, 440.
\(^{18}\) Rawls, TOJ, 442-443.
\(^{19}\) Rawls, TOJ, 445.
The basic assumptions of Rawls’s moral psychology that shape his account of how the individual will develop a sense of justice can be summarised as follows. Individuals possess certain moral sentiments that are closely associated with their natural sentiments, and thus their fundamental humanity. A central fact of our moral psychology is a tendency to reciprocate, to respond in kind when others, with manifest intention, act for our good. We also experience moral feelings of guilt and shame when we fail to live up to a self-conception that we have been raised to affirm. As a result of reciprocity and the desire for self-respect, individuals who live in a well-ordered society develop a sense of justice that evolves from a morality of authority, through a morality of association, and ultimately to a morality of principles. These are the three stages of morality according to Rawls, which I will proceed to briefly lay out in the next sections.

\[ A \] The Morality of Authority

The first stage of moral development is the “Morality of Authority”.\(^{20}\) This is the morality of the child, who lacks an understanding of moral principles and yet has particular rules and demands addressed to them by those in authority, whether this authority-figure be a child’s parents or broader societal institutions.\(^{21}\) To be moral at this stage is to be obedient in the face of these commands.\(^{22}\)

At first, the individual obeys moral rules primarily due to a fear of punishment, affirming a sense of justice centred around threats of force and unquestioning obedience.\(^{23}\) However, if the authority figure (parent) is just and acts with manifest intention for the well-being of the subject

\(^{20}\) Rawls, TOJ, 462-463.
\(^{21}\) Rawls, TOJ, 463.
\(^{22}\) Rawls, TOJ, 466.
(child), the fundamental psychological fact of reciprocity, as noted above, leads the child to develop some reciprocal affection for and trust in their parents.\textsuperscript{24}

Continuing development through the morality of authority requires that the authority figure embodies the particular principles of justice that they wish to instil in the subject. The authority figure must be just. This ensures that the subject respects and does not resent the authority figure and the principles that they require them to obey, while also providing an example for them to emulate.\textsuperscript{25} Similarly important is the manifest intention of the authority figure to act for the good of the individual. This allows them to have faith in their surroundings, trust that they will be looked after by the authority figure, and thus to ‘launch out’ and test, express and develop their abilities and competences in a way that leads them to feel self-respect.\textsuperscript{26} Attaining this primary good, as well as the enjoyment that individuals feel when exercising their excellences (The Aristotelian Principle) ensures that the individual experiences substantial enjoyment which is attributable by them to the authority figure.\textsuperscript{27} The tendency to answer in kind, therefore, the basic fact of reciprocity, means that the subject begins to feel love towards the authority figure as well.\textsuperscript{28}

This reciprocal love for institutions of authority, which command obedience of particular rules, leads the individual to uphold those rules and principles in a way that comes to be decreasingly reliant on the threat of punishment. While the subject does not yet understand the principles they are upholding, they do begin to feel guilt and seek reconciliation when they fail to live up

\textsuperscript{24} Rawls, TOJ, 463-464; Rousseau, \textit{Emile}, 228.
\textsuperscript{25} Rawls, TOJ, 464-465; Rousseau, \textit{Emile}, 228
\textsuperscript{26} Rawls, TOJ, 464.
\textsuperscript{27} Rawls, TOJ, 424-433, 440-446, 465-466
\textsuperscript{28} Rawls, TOJ, 466-467; Rousseau, \textit{Emile}, 365
to the expectations imposed by particular norms.\textsuperscript{29} Again, this requires just institutions, as well as clear, intelligible and justified rules or principles.\textsuperscript{30}

Over the course of this first stage of moral development the individual thus acquires a morality of authority, which Rawls notes is only applicable to social arrangements (beyond the parent-child relationship) in circumstances that require the prerogatives of leadership and command.\textsuperscript{31} The individual at this stage is predisposed to follow seemingly arbitrary precepts which go against their natural inclinations because they are handed down by figures of authority, who are reciprocally loved and trusted and who act in conformity with the principles. The ‘virtues’ at this stage are obedience, humility and fidelity. The morality of authority is a necessary first step on the path to a sense of justice.\textsuperscript{32}

\textit{B The Morality of Association}

The next stage of developing a sense of justice is referred to by Rawls as the “Morality of Association.”\textsuperscript{33} This reflects, as Rawls notes, stages three to five of Kohlberg’s schema of moral development, during which an individual adheres to principles as the result of belonging to particular groups, their membership of which entails certain expectations and rules that they wish to uphold.\textsuperscript{34} Expanding their world beyond the authority figure, over the course of the morality of association the individual becomes part of steadily larger groups and associations, and their sense of justice develops accordingly.\textsuperscript{35}

\begin{itemize}
\item \textsuperscript{29} Rawls, TOJ, 465.
\item \textsuperscript{30} Rawls, TOJ, 465-466.
\item \textsuperscript{31} Rawls, TOJ, 467.
\item \textsuperscript{32} Rawls, TOJ, 466.
\item \textsuperscript{33} Rawls, TOJ, 490.
\item \textsuperscript{34} Rawls, TOJ, 462n; Kohlberg, \textit{Philosophy of Moral Development}, 18.
\item \textsuperscript{35} Rawls, TOJ, 470.
\end{itemize}
As they necessarily emerge from the morality of authority into a broader world of associations, the individual develops a desire to live up to the expectations of the people in these associations, and to successfully play their role within them. This again reflects both reciprocity and a desire for self-respect. As Rawls provides, associations are populated by other individuals who evidently intend to live up to their particular duties and obligations. Due to the individual’s fundamental reciprocity, Rawls argues that this evident intention on the part of their associates to fulfil their duties and obligations, leads them to develop friendly feelings of trust and confidence, as well as a desire to act in a similar way. A failure to reciprocate inclines them towards feelings of guilt.

As a result of this reciprocal mechanism, the individual acquires a desire to play a particular role within their association. This requires an ability to consider their role in an association, as well as the potential roles of others, indicating a growing awareness of the situation of others and strengthening a capacity for reciprocity. They also see exceptional examples of people successfully performing their expected roles, which engages the “companion principle” to the Aristotelian principle, in that they enjoy seeing and wish to emulate the successful expression of natural capacities in other people. They also experience feelings of self-respect.

Again, Rawls emphasises that the rules of the association must be just and associates must evidently manifest an intention to honour their obligations. This leads the individual to act according to particular principles of justice within their association. At this level of development, the adherence to principles and feelings of affection for others are expanded

36 Rawls, TOJ, 470.
37 Rawls, TOJ, 470.
38 Rawls, TOJ, 468-469.
39 Rawls, TOJ, 471.
40 Rawls, TOJ, 471.
beyond the authority figure, and hence the understanding of moral principles becomes substantially more advanced.\textsuperscript{41} For example, while an individual possessing a morality of authority will not steal from their neighbour because an authority figure (a parent, a state) has commanded them not to, an individual possessing a morality of association will not steal from their neighbour because they see this as an important principle of the association that is their neighbourhood, and an aspect of their role as a neighbour.

Kohlberg suggests that the morality of association can be extended to society as a whole (which is in this conception simply a large association) and a desire to be a good citizen.\textsuperscript{42} Thus, by the operation of the fundamental Rawlsian principle of reciprocity, the moral feelings of guilt, shame and self-respect and the institutions of a well-ordered society, the individual can come to develop an allegiance to large groups of people and uphold certain principles in their dealings with those people. However, it is important to note that the motive for complying with these principles of justice is still substantially limited by the ties of friendship and fellow feeling, and concern for approbation from wider society. While the individual subject appreciates certain principles, they do not adhere to the principles universally or for their own sake. They also, more importantly, do not extend these feelings, and this desire to act justly beyond those in their association.\textsuperscript{43}

It must be emphasised, therefore, that the society characterised by a morality of association still has the characteristic of what Bergson would call a “closed society”.\textsuperscript{44} It contains the ever-present risk of exclusion, of defining someone as outside the association. I will argue in the

\textsuperscript{41} Rawls, TOJ, 470-471.
\textsuperscript{42} Rawls, TOJ, 472; Kohlberg, \textit{Philosophy of Moral Development}, 18-19.
\textsuperscript{43} Rawls, TOJ, 473.
following chapter that the morality of association is predominant in present-day democracies, and that this maintains and possibly exacerbates the possibility of Schmittian antagonism. In defining an associational “us” we maintain the possibility of an exterior “them” who, if they are considered hostile, may be defined as the enemy. The intensity of associational bonds in a context characterised by a failure of society-wide reciprocity, will be conceived of as potentially generating the emergence of exclusive and unreasonable political groups, and hence antagonism.45

C The Morality of Principles

The final stage of moral development, “The Morality of Principles”, entails an allegiance by citizens to the principles of justice themselves, that can be separated from their love for an authority figure and affection for their associates. This is what Rawls characterises as a complete sense of justice.46

The morality of principles builds on the implicit understanding of principles of justice developed by those in associations. As the individual develops attachments to a broader array of individuals and communities, they will, according to Rawls, become aware of the fact that they and those for whom they care are the beneficiaries of institutions that uphold particular principles of justice.47 They will also need to learn how to play a wider array of “roles” and take up the point of view of many others in order to justify decisions adjudicating claims between one another, necessarily developing a mastery of those principles.48 This leads them

45 Rawls, TOJ, 475.
46 Rawls, TOJ, 473.
47 Rawls, TOJ, 473-474.
48 Rawls, TOJ, 473.
to develop, according to Rawls, a reciprocal allegiance to those institutions, and the principles of justice that underpin them.\textsuperscript{49}

Rawls argues that his principles of justice as fairness, while not the only valid principles of justice, do have a particular advantage when it comes to developing a sense of justice.\textsuperscript{50} These principles, particularly the difference principle which requires that inequalities benefit the most disadvantaged, are uniquely suited to reciprocity. Not only are each person’s liberties secured but every citizen shares in the benefits of social cooperation.\textsuperscript{51} This also validates feelings of self-respect, as the institutions governed by justice as fairness validate the worth of every citizen as free and equal participants in a system of fair cooperation. Every individual’s good is included in a scheme of mutual benefit, which affirms in public institutions each person’s endeavours and leads to higher self-esteem.\textsuperscript{52}

The difference principle also coincides with the democratic value of fraternity. This is best expressed on a society-wide level, in Rawls’s conception, as a desire on the part of each citizen to have their advantages to be for the good of all, especially the worst off. Rawls argues that the difference principle, and the principle of fraternity do not require particular ties of friendly sentiment to all other members of society that can be seen as impractical. Rather, Rawls argues that the difference principle naturally leads to such feelings of fraternity.\textsuperscript{53}

A fully developed sense of justice based on the principles suggested by Rawls would, therefore, engage the innate human tendency to reciprocity and the desire for self-respect. Moreover, this

\textsuperscript{49} Rawls, TOJ, 474.
\textsuperscript{50} Rawls, TOJ, 476.
\textsuperscript{51} Rawls, TOJ, 177.
\textsuperscript{52} Rawls, TOJ, 179, 476.
\textsuperscript{53} Rawls, TOJ, 105-106.
sense of justice, while continuous with a love for all people, stops short of being supererogatory. Rawls’s sense of justice is compatible with a universal love for humanity, which forms the basis, for example, of Bergson’s open society, but stops short of requiring benevolence or philanthropy in order to be effective. Rawls also emphasises a Kantian interpretation of the principles of justice as fairness, whereby he notes that in acting on them human beings express their nature as free and equal rational beings.

**D A Conception-Dependent Desire to be Just**

The purpose of this chapter has been to lay out what, in my view, is Rawls’s central response to the problem of antagonism as presented by Schmitt. This is Rawls’s account of how citizens under institutions that affirm the political conception of justice as fairness would develop a psyche that wants to be reasonable. Essentially, Rawls is relying on moral education to ward off antagonism by cultivating citizens who want to be just, allowing for an overlapping consensus and thus stabilising liberal democracies. This desire to be just can be clarified with reference to Rawls’s account of “conception-dependent” desires in *Political Liberalism*.

In *Political Liberalism*, Rawls explains how citizens will possess a desire to uphold and act upon the principles of justice as the best expression of their self-conception as free and equal, reasonable and rational citizens. He hints at this in *Theory* as he explains how the principles of justice as fairness are affirmed as the best expression of a particular conception of the person. But it is in Rawls’s account of moral motivation in *Political Liberalism* that he establishes the centrality of conception-dependent (or as Paul Weithman labels them ideal-

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54 Rawls, TOJ, 476.
55 Rawls, TOJ, 476-477.
57 Rawls, TOJ, 473, 476.
dependent) desires, based on the *political* conceptions of the citizen and of society, in motivating the citizen who possesses a sense of justice.\textsuperscript{58}

The morality of principles outlined above generates the “principle-dependent desire” of citizens to act upon the principles of justice underpinning the institutions of their society.\textsuperscript{59}

Thus, the principle of equal liberty would lead a citizen to oppose an amendment to their political constitution infringing upon the rights of others to free political association (one of the basic liberties)\textsuperscript{60} for the simple reason that they feel an allegiance to the principle itself. They would also experience unpleasant feelings of guilt, and more generally, of self-disappointment for failing to affirm this principle.\textsuperscript{61}

In *Political Liberalism*, however, Rawls emphasises that the desire to act upon these principles is conception-dependent. Citizens do not affirm the principles of justice as fairness simply because of an abstract allegiance to the principles themselves. Instead, “the principles we desire to act from are seen as belonging to, and as helping to articulate, a certain rational or reasonable conception, or a political ideal.”\textsuperscript{62} In the process of acquiring a sense of justice in a well-ordered society, the citizen develops an allegiance to the “public conception of justice”, which contains the two principles of justice as fairness, as well as the fundamental ideals that are specified in justice as fairness: the ideals of all citizens as free and equal persons, and society as a fair scheme of cooperation.\textsuperscript{63} Weithman notes that this leads to a sense of justice that is, in some ways, more expansive than the one expressed in *Theory*, as it goes beyond a desire to act upon

\textsuperscript{58} Rawls, PL, 81-84; Weithman, *Why Political Liberalism*, 283.

\textsuperscript{59} Rawls, PL, 83; Weithman, *Why Political Liberalism*, 284.

\textsuperscript{60} Rawls, PL, 291.

\textsuperscript{61} Rawls, TOJ, 474.

\textsuperscript{62} Rawls, PL, 84.

\textsuperscript{63} Rawls, PL, 84-85; Weithman, *Why Political Liberalism*, 287.
merely the principles themselves and instead leads the citizen to support that which allows them to best articulate their political ideal of citizens as free, equal, reasonable and rational.64

Continuing the example given above, a citizen would still not support an amendment to a constitution that infringes upon the rights of others to free political association. However, their desire to oppose such an amendment would be derived from their ideal conception of citizens as free, equal, rational and reasonable. In desiring to live up to this ideal of the citizen, they would support the principles of justice as fairness as the best expression thereof.65 Living up to this ideal becomes an important part of citizens’ self-respect, the most important primary good.66

An important point to note, when discussing the conception-dependent desire to act upon the principles of justice as fairness, is that the ideal conceptions of the citizen and society and the principles of justice are derived (for Rawls) from fundamental democratic values. The three principles of justice as fairness coincide with the democratic values of liberty (equal liberty) equality (equality of opportunity) and fraternity (the difference principle).67 Rawls explicitly establishes these principles as an expression of “basic intuitive ideas that are embedded in the political institutions of a constitutional democratic regime and the public traditions of their interpretation.”68 What this means is that Rawls, far from engaging in abstract ideal theory, instead presents a powerful argument based on political ideals that we, as democratic citizens, already value. In this sense, his principles of justice are simply a systematised version of values that are widely yet latently present in the public political culture of a democratic society. His

64 Weithman, Why Political Liberalism, 292.
65 Weithman, Why Political Liberalism, 292.
66 Rawls, PL, 84.
67 Rawls, TOJ, 106.
68 Rawls, “Political not Metaphysical,” 225; Rawls, PL, 175.
goal is to shape into a coherent view deeper bases of agreement that already exist within democracies.69

Rawls’s principles of justice as fairness, ultimately provide a convincing interpretation of the basic democratic values of liberty, equality and fraternity that successfully engage with the moral psychological principle of reciprocity and a desire for self-respect so as to allow for the realistic possibility of a just and stable society.70 The sense of justice is thus fundamental to establishing his response to the Schmittian critique.

II The Sense of Justice and Antagonism

Rawls’s account of the acquisition of a sense of justice, as outlined in this chapter, is the most important aspect of his response to the problem of antagonism. It is through appealing to citizens’ moral psychology and political self-conception that political liberalism can speak to even unreasonable citizens and lead them to become reasonable. The principles of justice as fairness are able to play this educative role effectively because they are both uniquely able to engage our tendency to reciprocity and desire for self-respect, as well as explicitly derived from the public political culture of democracies. The sense of justice is foundational to the very possibility of reasonable pluralism and hence the development of an overlapping consensus outside of ideal theory. Rawls’s arguments for stability are, in essence, all built upon his moral psychology.

If citizens generally have a conception-dependent desire to act in a way that is in line with the two principles of justice as fairness, they will tend to develop and affirm reasonable comprehensive doctrines. In other words, citizens in possession of a sense of justice will

69 Rawls, “Political not Metaphysical,” 229; Rawls, PL, 9.
70 Rawls, TOJ, 105-107; Rawls, PL, 105-107.
potentially revise their comprehensive doctrines along reasonable lines. This allows for an overlapping consensus to be more than a utopian ideal, and rather part of political reality.\(^{71}\)

In appealing to basic democratic values, to peoples’ natural tendency to reciprocate, to feelings of love, trust and friendship that develop when answering the just behaviour of others in kind, and to guilt and shame that develop when one does not, justice as fairness offers something to the unreasonable beyond exclusion. This is the “educative role” of the political conception and is the primary way in which Rawls tries to pre-empt the political, without resorting to external sources of stability.\(^{72}\)

In Rawls’s reliance on a moral psychology based in reciprocity, he also provides a compelling explanation of the contemporary resurgence of unreasonable doctrines. Unreasonable doctrines will, for Rawls, naturally gain traction in circumstances where there is a society-wide failure of reciprocity. Neglect of the difference principle is an example of just such a failure. This kind of failure of reciprocity leads citizens to feel that society as a whole is not working as a fair system of cooperation. They will thus turn away from a morality of principles, or a conception-dependent desire to support and improve the institutions of their basic structure, and look rather to the more parochial bonds of associations. If mutually exclusive associations within a society become opposed to one another, and begin to see one another as enemies, there will be a return of the unreasonable and a recurrence of antagonism. Such antagonism may not be reasonable, but, given a widespread failure of reciprocity, it may well be entirely rational. Schmitt’s inevitable and chaotic recurrence of the political is, I will argue in the following chapter, an avoidable failure of Rawlsian reciprocity.

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\(^{71}\) Rawls, PL, 142-148.

\(^{72}\) Rawls, PL, 71.
Chapter 4  The Neglect of the Difference Principle

Does Rawls provide a compelling response to the Schmittian critique of liberalism, especially in light of the contemporary crisis of liberal democracy? Is there hope for a liberal-democratic society that is both stable and just, that does not descend into antagonism or euphemistically oppress its enemies? Can we derive a response to the recurrence of the political, conceived of as a return of the unreasonable, from the arguments put forward in Political Liberalism? The questions with which this thesis began have so far been answered only in part. Chapter 2 established the potential stability of a Rawlsian well-ordered society, comprised of reasonable comprehensive doctrines in an overlapping consensus, and identified the problem of the unreasonable as central to a Rawlsian conception of Schmitt’s political. Chapter 3 explored the educative potential of the political conception of justice as fairness and suggested the ways in which citizens could be encouraged to become more reasonable. This chapter applies these Rawlsian concepts to the contemporary crisis of liberal democracy. This allows us to conceive of contemporary instability in a Rawlsian light, as a failure of reciprocity.

I  The Liberalism of Small Differences

So far, I have explained the hypothetical stability of Rawls’s ideal: a well-ordered society wherein citizens develop a conception-dependent desire to act upon the principles of justice as fairness as a political conception, affirm reasonable comprehensive doctrines that are part of an overlapping consensus, and thus do not engage in antagonistic struggle. I have also established the centrality of the educative function of a political conception of justice, as citizens are brought to affirm ideals derived from a democratic public culture, develop a necessary sense of justice, and support making institutions more just. Rawls provides both an ideal and a path towards that ideal, as the unreasonable can be encouraged to become more reasonable by virtue of natural tendencies to reciprocity and a desire for self-respect.
A Rawlsian response to antagonism can thus be made out, at least on the level of theory. But is it in any way realistic, particularly from the vantage point of 2019? Our contemporary situation reflects the absence of both well-ordered and reasonably well-ordered democratic societies. As noted in Chapter 2, unreasonable doctrines are becoming more prevalent in many mature liberal democracies including the US and the UK, Western European countries such as France, Germany and Austria, and younger democracies such as Hungary, Brazil and Turkey.¹ While each of these countries has a particular history, and particular reasons for its own turn towards unreasonable doctrines, a general trend of democratic crisis cannot be ignored.

A contemporary Rawlsian response to Schmitt must therefore answer two further questions. First, how do we explain the current crisis? And second, what can be done in response? This Rawlsian diagnosis and response can subsequently be compared to an interpretation of the contemporary crisis of liberal democracy derived from Schmitt and applied in our contemporary context by Mouffe.

This Schmittian/Left-Schmittian perspective, as outlined in Chapter 1, would present the contemporary crisis as the result of liberalism’s denial of the political, and the fundamental contradictions of liberal democracy.² The return of unreasonable doctrines in this conception is simply the recurrent crisis that comes from the democratic development of political groups which come into conflict with one another, which liberalism has failed and will continue to fail

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¹ Levitsky and Ziblatt, *How Democracies Die*, 1-10.
² Schmitt, COP, 70-79; Schmitt, CPD, 1-17.
to address. The responses offered are, on the one hand, Schmitt’s authoritarianism, and on the other, Mouffe’s embrace of a radical, agonistic pluralism.

The Rawlsian diagnosis that I will put forward, contra Schmitt and Mouffe, sees unreasonableness as arising quite consistently from a basic structure that does not honour liberal principles of justice (formalised in Rawls’s justice as fairness), particularly the difference principle. The difference principle is at the heart of establishing society-wide reciprocity, and its neglect leads to a failure of moral development and an associated intensification of associational ties. These increasingly exclusive associations are characterised by feelings of resentment, envy and hostility towards those who are outside a political group, and thus the potential emergence of enemies. Society is no longer seen as a system of fair cooperation, and this leads comprehensive doctrines to become increasingly unreasonable, both in a rational and ultimately an irrational way. This emerging hostility between unreasonable and exclusive associations, evident in contemporary liberal democracies, provides a Rawlsian explanation of Schmitt’s political.

With reference to the real world, it is clear that the social, political and economic trajectory of advanced liberal democracies over the past thirty years – coinciding with the advent of neoliberalism, which begins at the same moment Theory is published in 1971 – has failed to honour the fundamental reciprocity between the individual and their society as a whole that is required in order to lead citizens to establish a true morality of principles. The difference principle has not been followed and the substantial and unfair inequality we see today is manifestly not for the benefit of the most disadvantaged. This is, I will argue, why we see a

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3 Schmitt, COP, 78-79; Schmitt, CPD, 76.
4 Schmitt, Legality and Legitimacy, 67-68; Schmitt, CPD, 34; Schmitt, Political Theology, 59; Schmitt, Roman Catholicism and Political Form, 38-39; McCormick, Carl Schmitt’s Critique of Liberalism, 3-4; Charles Olney, “Justice and Legitimacy”, 50; Werner-Müller, A Dangerous Mind, 39-41.
5 Mouffe, The Return of the Political, 6-8; Mouffe, For a Left Populism, 31-33.
resurgence of unreasonable doctrines, which conceive of justice as something limited to exclusive associations and see those who are outside such a defined group as potential enemies.

The final section of this chapter will chart a Rawlsian path out of this crisis, building on the concept of the modus vivendi explored in Chapter 2. Dismissing the Schmittian response that relies on the imposition of order by an authoritative sovereign, I will suggest that a renewed Rawlsian liberalism, with an emphasis on the difference principle, can be established as a necessary modus vivendi. Subsequently, due to the educative potential of justice as fairness, this modus vivendi could deepen into a genuine overlapping consensus. On the question of how a modus vivendi can be established I will suggest that, although Mouffe’s critique of Rawls is ill-guided, her work, both alone and with Ernesto Laclau, on radical democracy and hegemonic coalition building may be of substantial value. Ultimately, I suggest that there is a genuine hope for something better in the face of the return of the unreasonable.

A The Difference Principle and Reciprocity

Rawls’s difference principle provides that “the higher expectations of those better situated are just if and only if they work as part of a scheme which improves the expectations of the least advantaged members of society.” This is a complex idea that raises a number of issues concerning the precise definition of the “least advantaged”, how benefits are to be calculated, and what form of economic organisation is, in fact, compatible with such a requirement. I will not wade into debates as to whether Rawls – who suggested in his later work that either “property-owning democracy” or “liberal socialism” were compatible with his principles of justice – was, in fact, a “reticent socialist”. Whatever the ultimate system of social and

6 Rawls, TOJ, 75, 302; Rawls, PL, 5-6.
7 Rawls, TOJ, 76-83; Rawls, PL, 5-6.
economic organisation is in this context, the general trajectory remains the same: towards a society with limited inequality channelled to the benefit of the most socially disadvantaged.

The operation of the difference principle is explained by Rawls with reference to the “working class” and the “entrepreneurial class” in a property-owning democracy as follows. He notes that those considered “entrepreneurs” tend to have better life prospects than those who belong to the class of unskilled laborers. According to the difference principle – which, as outlined above, is simply Rawls’s formalisation of popularly held ideas in liberal democracy of fraternity and society as a fair system of cooperation – such inequalities are justifiable only if the difference in expectation is to the advantage of the representative individual who is worse off, in this example the representative unskilled worker. Thus, such inequality in expectations is only permissible if removing or lowering it would make the working classes suffer greater disadvantages.  

At its core, the difference principle characterises as unjust a situation where the higher expectations of one group are excessive and lead to a deterioration of the expectations of the least advantaged. If the highest expectations were decreased, the situation of those at the greatest disadvantage would be improved in this situation. Returning to the example of the unskilled labourer and the entrepreneur, if the entrepreneur’s advantages are excessive and lead to an overall deterioration in the expectations of the unskilled labourer, this would be unjust and unacceptable to the institutions of a well-ordered society. Just institutions would ensure that such an injustice is redressed.

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9 Rawls, TOJ, 78.
10 Rawls, TOJ, 79
11 Rawls, TOJ, 100.
As I emphasised in the previous chapter, the difference principle fundamentally expresses reciprocity on a societal level, as it establishes mutual benefits between those groups in society that are most distant in terms of advantage.\textsuperscript{12} Citizens, under the difference principle, would not gain at one another’s expense and thus Rawls argues that it would lead to a relative harmony of social interests being achieved.\textsuperscript{13} It also provides each citizen with self-respect, that essential primary good, as all feel valued as part of a fair system of social cooperation.\textsuperscript{14}

The benefits of the difference principle are thus not only economic and social, but also psychological (psychical or spiritual, one might say). Each citizen will develop a desire to support those institutions and principles that uphold the difference principle, as mutual trust and support is expressed in society as a whole.\textsuperscript{15} The evident intention of others to do their part in fair arrangements, fundamental to progressing from a morality of association to a morality of principles, is institutionally enshrined by this principle, ensuring confidence in these arrangements.\textsuperscript{16} Thus, this single principle provides an important component of the mechanism for moving from a morality of association to a morality of principles, embodies the democratic value of fraternity, ensures reciprocity, and fortifies stability.

\textbf{B The Failure of Reciprocity and the Morality of Exclusive Associations}

If the difference principle is not implemented, however, the aforementioned benefits will not be realised. Citizens’ senses of justice will not develop beyond a morality of association. There will be a growth in feelings of resentment and envy, as mutual benefit breaks down. Exclusive associations will become mutually hostile and, as citizens increasingly affirm unreasonable

\textsuperscript{12} Rawls, TOJ, 102.
\textsuperscript{13} Rawls, TOJ, 102.
\textsuperscript{14} Rawls, TOJ, 531-533; Rawls, PL, 284.
\textsuperscript{15} Rawls, TOJ, 472-479.
\textsuperscript{16} Rawls, PL, 86, 163.
doctrines, antagonism may emerge. The failure of reciprocity coming from the neglect of the difference principle will lead, in essence, to the emergence of the Schmittian political.\(^\text{17}\)

As explored in Chapter 3, the morality of association does not necessarily entail any relationship between an individual and society as a whole. While at the highest level (as expressed by Kohlberg) the morality of association could hypothetically extend to a closed society in its entirety, it remains perpetually exclusive, comprised of obligation and friendly feeling towards a limited group of people. There is always the possibility that there will be insiders and outsiders, an us and a them.\(^\text{18}\) These associations can be defined by geographical location, religious belief, social class or racial background and, in circumstances where reciprocity does not exist on a societal level, the Rawlsian association could become Schmitt’s decisive political entity.\(^\text{19}\)

The neglect of the difference principle makes it likely that citizens will retreat into different exclusive associations within society. It also leads to feelings of resentment and envy.\(^\text{20}\) Resentment refers to the moral feeling that is aroused when we see that another person is better off and explain this as the result of unjust institutions or wrongful conduct on their part. Resentment can sometimes be justified, as institutions are often unjust, conduct is often wrongful, and hence citizens can become resentful as the result of an accurate perception of unjust institutions that accrue benefit to those who have acted unjustly.\(^\text{21}\) Envy, on the other hand, is a non-moral feeling aroused when we see the advantages of others with hostility even

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\(^{19}\) Schmitt, COP, 37.

\(^{20}\) Rawls, TOJ, 533.

\(^{21}\) Rawls, TOJ, 533.
if we do not necessarily ascribe their success to injustice.\textsuperscript{22} Envy is not a moral emotion but, Rawls notes, it can be a natural and forgivable reaction to large discrepancies in advantage that are sufficient to wound one’s self-respect.\textsuperscript{23} Both resentment and envy have the potential to lead to hostile outbreaks when citizens see no constructive alternative to the material suffering, massive inequality and painful loss of self-respect they occasion, other than opposing (possibly in a Schmittian “political” sense) those who they see as more advantaged.\textsuperscript{24}

From Rawls, therefore, we can derive a theoretical explanation of antagonism within a society that has neglected the difference principle. If inequality is not for the benefit of the least advantaged, reciprocity on a society-wide level will not be established. Thus, citizens do not develop a sense of justice that goes beyond their associations, whether those associations be their particular social class, a religious community, ethnicity, or any other defined group within society. Citizens confined to their associations may also feel envy and resentment towards those outside their group, which could lead to the definition of an enemy and the hostile outbreak of antagonism. This antagonism can be spurred on by either resentment and rational envy or an irrational envy. In a situation where the difference principle has been neglected, Rawls would see a society-wide failure of reciprocity and recurrence of antagonism as no surprise.

\section{The Neglect of the Difference Principle in Contemporary Democracies}

Even a brief overview of the economic and political transformations that have occurred over the last decades in liberal democracies, especially in the US and Western Europe, indicates that the difference principle has been neglected. While it is arguable whether post-war, welfare-

\textsuperscript{22} Rawls, TOJ, 532.
\textsuperscript{23} Rawls, TOJ, 534.
\textsuperscript{24} Rawls, TOJ, 535-536.
state capitalism was just in a Rawlsian sense – *Theory* has been considered by some to be a “transcendental deduction” of the USA circa 1971,\(^\text{25}\) while Rawls’s later work was critical of welfare-state capitalism\(^\text{26}\) – it is clear that, since the publication of *Theory* in 1971, inequalities have not been to the benefit of the least advantaged.

Samuel Moyn provides a compelling explanation of the last four decades as characterised by an emphasis on “status equality” as embodied in rights and human rights discourse (which one can associate with the first principle of justice) alongside a neglect of “distributive equality” (associated with Rawls’s second principle). Neoliberal economic policies, leading to a vast growth in inequality, have been married with a rights discourse that echoes the first principle of justice in a fashion that entirely neglects the distributive impetus of Rawls’s difference principle.\(^\text{27}\)

An illustrative example of the neglect of the difference principle comes from the USA. As economists such as Piketty\(^\text{28}\) and Stiglitz\(^\text{29}\) note, changes in the economic structure of the USA - and in most developed liberal democracies - since the 1970s have led to declining real incomes and rapidly rising inequality.\(^\text{30}\) A striking example of this change is that the real incomes of CEOs at the 350 largest US companies was 20 times that of the average worker in 1965, whereas by 2012 it was 354 times as much. This massive increase in expectations cannot


be attributed to a greater contribution of CEOs to the wellbeing of society in general. Economic growth rates were substantially higher in the 1960s and since this period real incomes have stagnated.\textsuperscript{31} In fact, in the US, the life expectancy of middle-aged, non-Hispanic whites has been falling since 2000, concentrated among those with less than a college education and due to drug and alcohol abuse, and suicide.\textsuperscript{32} This reflects a situation where some in society have attained substantially greater benefits in a way that appears to be actively undermining the life prospects of others.

In circumstances where the difference principle has been neglected, bringing rising inequality and faltering reciprocity in its wake, there has also been a rise of exclusive associations divided along the lines of race, religion and class. These exclusive associations have increasingly affirmed unreasonable doctrines (whether rational or irrational) and engaged in the antagonistic definition of enemies, leading potentially to insecurity and the recurrence of the political.

The division between the Republican and Democratic parties in the US indicates the increasing division of liberal-democratic societies into exclusive associations based on factors such as ideology, race and religion. The Republican Party is primarily white in ethnicity (90% of their voters) whereas the Democrats have a larger proportion of supporters who are of African American and Hispanic descent or recent immigrants to the USA. The Republican party is largely supported by white evangelical Christians, whereas the Democratic party is becoming increasingly secular. Other substantial divisions emerge when one looks at levels of education (Democrats tend towards higher levels of education) and geographic location (Democrats are dominant in urban areas whereas Republicans are concentrated in rural parts of the US).\textsuperscript{33}

\begin{itemize}
\item \textsuperscript{31} Norris and Inglehart, “The Silent Revolution,” 448.
\item \textsuperscript{32} Norris and Inglehart, “The Silent Revolution,” 450.
\item \textsuperscript{33} Levitsky and Ziblatt, \textit{How Democracies Die}, 227-229.
\end{itemize}
These mutually exclusive associations have also come (at least in part) to affirm unreasonable doctrines in the Rawlsian sense. For example, the Republican party both rhetorically and in its actions expresses a desire to suppress the political rights of particular groups, using violent rhetoric and non-public reasons to justify political decision-making. President Trump, to provide just one example, speaks of locking up his political opponents and tweets about the possibility of a “civil war”, reflecting an almost Schmittian polemical approach.\textsuperscript{34}

In identifying these unreasonable and exclusive associations, drawing a distinction between rational resentment and envy, and irrational envy and hostility helps to sharpen a Rawlsian diagnosis of the current situation. Rational unreasonableness arises out of perceived injustices and extreme inequalities, and targets in an unreasonable fashion those in positions of unfair advantage. The latter, often emerging from the same or similar conditions, is less rational, more hostile, and aims simply to deny others of benefits. These distinct types of unreasonable doctrine are reflected in the literature on populism\textsuperscript{35} which draws links between various groups that could potentially be considered unreasonable by way of their definition of an antagonistic struggle between the “people” and an “elite”.\textsuperscript{36} Among these populist groups, some of whom affirm unreasonable doctrines or at the very least engage in unreasonable rhetoric, we can identify manifestations of both rational and irrational unreasonableness.

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On the one hand, left populist movements such as Syriza and Podemos in Europe, and arguably the Labour Party of the UK under Jeremy Corbyn, draw on anti-elite sentiment to establish an antagonism between the underprivileged, excluded “people” and the unfairly advantaged “elite”. Mouffe indicates support for such movements in her explicit calls for a “left-populism” that engages in agonistic struggles against the elite and abandons post-political liberalism. These left-populist movements at times abandon the reasonableness of a Rawlsian deliberative democracy, as they define enemies to be defeated and engage in exclusionary rhetoric and political actions. However, in doing so, they reflect what Rawls would consider to be rational resentment and forgivable envy, the moral feelings arising out of extreme inequalities and substantial injustices that are to the unfair benefit of an elite. They may be unreasonable, but rationally so, and their purpose can be identified as the restoration of reciprocity.

Right populism, on the other hand, reflects more aptly what Rawls would call hostile outbreaks of envy, a non-moral feeling that is more focussed on reducing the advantages of those considered “other” than restoring reciprocity. Leaders and movements espousing a “right populism” that can be classified as “unreasonable” include Trump, Bolsonaro, and Orban, the various right-populist parties of Western Europe, such as France’s National Front, the Austrian Freedom Party, Germany’s AFD, and the Brexit Party (formerly UKIP) which has also

40 Rawls, TOJ, 533.
managed to transform the right-wing of the UK’s Conservative Party.\textsuperscript{42} While at times gesturing towards restoring democratic equality, as Mouffe emphasises, right populism aims ultimately to restrict this equality and reciprocity to a more defined group such as the nation or the race.\textsuperscript{43} This reflects a “cultural backlash” against increasing immigration, diversity and a sense of cultural isolation by former majority groups.\textsuperscript{44}

This cultural backlash, prompting a turn to exclusionary and xenophobic politics, arises nonetheless from a decline in economic security and rise in inequality that leads people to close ranks behind strong leaders within defined communities.\textsuperscript{45} Essentially, right populism, while not directly responding to a failure of the difference principle, still reflects the Rawlsian diagnosis concerning irrational and envious responses to a failure of reciprocity. In circumstances where reciprocity has failed and people are consumed by feelings of resentment and envy, they turn to associations such as their racial or national group and express hostility to those who are outside of this.\textsuperscript{46} The contemporary recurrence of antagonism is, it seems, prone to a Rawlsian diagnosis.

\textbf{III The Difference Principle as the Basis of a Modus Vivendi}

The recurrence of antagonism in many contemporary liberal democracies, the current “populist moment” and crisis of democracy, can thus be tentatively attributed to the neglect of the difference principle. This failure of reciprocity and subsequent emergence of exclusive associations affirming both rationally and irrationally unreasonable doctrines animated by envy, resentment and hostility, has, I argue, led to the widely perceived return of antagonism.


\textsuperscript{43} Mouffe, \textit{For a Left Populism}, 19.

\textsuperscript{44} Mudde and Kaltwasser, ‘Studying Populism in Comparative Perspective,” 1667-1669.

\textsuperscript{45} Inglehart and Norris, “The Silent Revolution in Reverse,” 443.

\textsuperscript{46} Inglehart and Norris, “The Silent Revolution in Reverse,” 443.
Again, contra Schmitt and Mouffe, this is not due to a fundamental contradiction in liberal democracy as a concept nor a denial of the possibility of antagonism.

This Rawlsian diagnosis of the current crisis also allows us to suggest potential avenues of research concerning a response. This response, which I argue could be Rawlsian, liberal and democratic in nature, stands in opposition to Schmitt’s arguments for authoritarianism in the face of the political: a solution favouring externally imposed stability for democracies. Departing somewhat from Rawls’s characteristically cautious and potentially optimistic suggestions for political progress based on existing public political culture, I suggest that the principles of justice as fairness can and must first be accepted as part of a new modus vivendi, before subsequently developing into a full overlapping consensus.47

Agreeing on this point with Simone Chambers, I would suggest that the neglect of the difference principle, for at least the last four decades, reflects the lack of a true consensus of any kind, and that even a “mere” modus vivendi would be an important first step towards justice and stability.48 If such a modus vivendi is established and institutions become more just, then based on the mechanisms outlined in Chapter 2 and 3, citizens would experience reciprocal benefits, develop a sense of justice, and become more reasonable. Over time, as citizens revise their comprehensive doctrines to become more reasonable, the necessary compromise could deepen and broaden to become a genuine overlapping consensus built on the basis of reasonable pluralism.49

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47 Rawls, PL, 159-163; Chambers, “Rawls on the Barricades”, 86-87.
48 Chambers, “Rawls on the Barricades”, 81-87.
49 Rawls, PL, 159-161.
The question that remains, of course, is how such a modus vivendi can come into existence. My answer has two parts. First, we can draw on the radical democratic theory of Laclau and Mouffe, and their concept of hegemonic coalition-building, in order to provide Rawlsian liberalism with a more robust theory of change. Secondly, we can look with tentative hope to the contemporary situation, where mass movements appear to be emerging with the express purpose of establishing a new consensus as to the principles governing our society, with a greater emphasis on equality. It is possible that our current crisis is beginning to produce a response.

Rawls, as is often noted, is relatively quiet when it comes to discussing the need for political transformation. His project is not one of radical change or of social revolution. However, his principles of justice as fairness as noted above, and emphasised by Chambers, are so far from the contemporary situation that they would “take nothing short of a revolution to bring about.” This incongruity reflects, perhaps, Rawls’s slightly different context, but it also indicates a lack in Rawls’s theory. His focus was on deriving agreement based on a public political culture already in existence, not on creating that culture.

However, while Rawls himself does not provide a theory of transformation, justice as fairness provides an ideal that can become reality, even on the basis of a contingent modus vivendi. This is where Mouffe’s “radical democracy”, despite my disagreements with her critique of Rawls on a Schmittian basis, could in fact contribute to bolstering a Rawlsian response to antagonism. As noted by Peter Selg, while radical democracy and Rawlsian liberalism have often been held to be utterly opposed to one another, they actually agree on a number of

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50 Chambers, “Rawls on the Barricades”, 81; Edmundson, Reticent Socialist, 186-199.
51 Chambers, “Rawls on the Barricades”, 81.
52 Chambers, “Rawls on the Barricades”, 81-87.
important points, and there is certainly some scope for bringing concepts from the one to the support of the other. Laclau and Mouffe’s *Hegemony and Socialist Strategy*, as well as later work such as Laclau’s *On Populist Reason* and Mouffe’s *For a Left Populism*, argue for a political practice of establishing hegemonic coalitions of different identities and interests, that coalesce around nodal points by building chains of equivalence between diverse interests. Rawls’s principles of justice could form just such a nodal point around which a revitalised liberal-democratic project, emphasising the value of justice as fairness in the interests of a diverse coalition, could coalesce. Further, a left populism that radicalises liberal-democratic concepts (as Mouffe proposes) could possibly ensure that it does not reflect unreasonable views (in that it does not wish to repress other, not unreasonable views) and provide the political impetus for a transformed Rawlsian project. Rawlsian liberalism and radical democracy both have, I would argue, something to offer the other. Radical democracy can provide a theory of how a modus vivendi concerning justice as fairness can come into being. Rawlsian liberalism provides a theory of how this modus vivendi can become genuinely stable.

Returning once again to contemporary reality, there is even some cause for hope in the current crisis. Increasing recognition of the problem of inequality is evident in the work of economists such as Stiglitz and Piketty, and even powerful institutions such as the OECD, which indicates a possible readiness on the global stage to adopt the difference principle as part of a necessary compromise. The apparent return to the political mainstream of rhetoric and policies emphasising redistribution, economic transformation, and the need for an end to inequality is apparent in the rise of Jeremy Corbyn in the UK, as well as the leftward shift of the American

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Democratic Party.\textsuperscript{57} This indicates the possibility of a consensus emerging in liberal democracies as to the necessity of the difference principle, not simply as an aspect of justice as fairness but for the more urgent purpose of responding to the possibility of antagonism. It is possible that the current crisis of liberal democracy is already beginning to produce a new modus vivendi that accepts fairness as necessary for stability.

If the principles of justice as fairness in their totality were to become the subject of a modus vivendi, institutions would become more just. This would, as per the mechanisms outlined in Chapter 2 and Chapter 3, lead to the widespread development of a sense of justice, increasingly reasonable pluralism, and potentially an overlapping consensus. Rawls provides us with principles drawn from our fundamental liberal-democratic values that would, if implemented by institutions even on the basis of necessity, I believe, lead to a just and stable society in which the risk of antagonism is defused.

Conclusion

“Creon: *The enemy, even in death, does not become a friend.*

Antigone: *But I have acted not from enmity, only from friendship.*”

Sophocles, *Antigone*

I began this thesis by drawing a contrast between Schmitt, one of liberal democracy’s most incisive critics, and Rawls, arguably its most compelling proponent. Schmitt, the fundamentally pessimistic conservative playing the role of a modern Creon, Rawls a dutifully optimistic and potentially doomed Antigone. While not challenging the Schmittian premise, that the risk of antagonism permeates the political as a whole, I have argued that Rawls provides a theoretical framework that justifies a hope that it can be defused in a manner that is liberal and democratic, and stable and just.

In doing so, I have argued for the theoretical consistency of Rawls’s political liberalism in the face of a Schmittian critique and its applicability to the reality of contemporary politics. The well-ordered society of *Political Liberalism*, with its overlapping consensus of reasonable comprehensive doctrines and the political conception of justice as fairness fulfilling its educative function, provides a response to Schmitt’s claim that liberalism either fails to engage with the political in any meaningful way or renames it in a false depoliticisation.

The well-ordered, or even somewhat well-ordered, society of justice as fairness would not be prone to the recurrence of antagonism. An overlapping consensus of reasonable comprehensive doctrines provides a response to the possibility of hostility, in conditions of reasonable pluralism. In providing principles of justice that are derived from basic democratic values of liberty, equality and fraternity, and that appeal to natural human reciprocity and a desire for
self-respect, Rawls suggests the possibility of unreasonable citizens becoming reasonable, and thus a better liberal democracy.

Rawls also facilitates an understanding of the contemporary crisis of liberal democracy, a recurrence of antagonism within established democratic states that, on first glance, appears to validate a Schmittian analysis. While hostile political division between mutually opposed groups are becoming increasingly prevalent within existing liberal democracies, this does not, I have argued, invalidate the Rawlsian project. Rawls’s concepts furnish an explanation of the contemporary crisis as a failure of reciprocity, caused by the neglect of distributive equality, as embodied by the difference principle. This failure has prevented the development of a societal morality of principles, as citizens retreat into exclusive associations defined by class, religion and race. This failure of reciprocity, and the associated rise in inequality, has led to both rationally and irrationally unreasonable responses of resentment, envy, and hostility towards those defined as the enemy.

I have also suggested that Rawls allows us to consider the first steps in averting this crisis, in mitigating antagonism and progressing towards a more reciprocal, just and stable society. While further research must be done concerning the practical political possibility of establishing a new modus vivendi, I would argue that the principles of justice as fairness provide a compelling formulation of fundamental liberal-democratic values that can be accepted as necessary by a broad swathe of society. The resurgence of political movements emphasising distributive justice indicates that citizens may be coming to an awareness of the fact that the status quo cannot continue. While this thesis is by no means prescriptive, I believe that there is certainly hope to be salvaged from a contemporary reading of Rawls.
There can, at the end of the day, be no conclusive answer to the question of whether humanity is fundamentally good or fundamentally evil. While Schmitt argues that all theory must assume people to be fundamentally evil, Rawls helps us to structure an argument based on a necessary hope that we can, under the right conditions, “be sufficiently moved by a reasonable political conception of right and justice to support a society guided by its ideals and principles.”¹ If we can come to accept liberal political principles of justice as the basis of our institutions, and if humanity has even the barest tendency to reciprocity, then it seems that this hope is not ill-founded.

Perhaps Rawls’s well-ordered society, unlike Sophocles’ Antigone, is not yet buried alive under the weight of its ill-guided moralism. Maybe a robust response to the recurrence of antagonism can be found within liberal democracy after all. The well-ordered society, in this conception, is more than just a naïve ideal. It is, rather, a practical necessity.

¹ Rawls, PL, lx.
References


United States Constitution, Amendment 1.


