

On the Relationship Between Freedom and Justice
An Analysis of the Works of Ian Carter and John Rawls

Jan Liedtke

Trinity College Dublin
Department of Political Science
Supervisors: Dr. Peter Stone and Dr. Brian Carey

Dissertation
Presented in fulfillment of the requirements for the degree of
Doctor of Philosophy

Submission of revised version: 18. January 2025

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Acknowledgements

Pursuing a PhD is quite an experience. There are many challenges that one must overcome to get to the end of it. The support I have been fortunate enough to enjoy has come in many ways. People have supported me emotionally, intellectually, and financially. Here I would like to express my wholehearted gratitude to them.

First and foremost, I would like to thank my wife, Luisa Joan Messina Liedtke. She has been an unwavering source of love and inspiration. It is because my wife has always been at my side that I managed to get to this point. I am deeply grateful. Moreover, I would like to thank my parents, Frank Hansjoachim Friedrich Wilhelm Liedtke and Simone Wäser-Liedtke, for their unconditional support during many challenges throughout my life. Further, I would like to express my gratitude to my in-laws, Antonio Messina and Julie-Ann Mautino Messina, who have immensely supported the completion of my thesis throughout this summer.

I would also like to thank my supervisors, Dr. Peter Stone, and Dr. Brian Carey. I would like to express my deep gratitude to Dr. Stone for relentlessly pushing me to improve and for always having my back. Moreover, I would like to thank Dr. Carey for his optimism and his thoughtful feedback that I have been lucky to receive. I would also like to express my gratitude to Dr. Ian Carter for giving me valuable feedback on my work and inviting me to the second Pavia Workshop On Freedom in 2024. Due to Dr. Carter's extensive written and verbal feedback, this dissertation is much better than it would otherwise have been. Furthermore, I would like to express my gratitude to Dr. Pietro Intropi who on many occasions has made time to give me invaluable feedback. I would also like to thank Dr. Ralf Bader and Dr. Alexa Zellentin whose feedback during the viva has helped me to improve this work. Finally, I would like to thank the Department of Political Science of Trinity College Dublin for having financially supported my PhD studies.

Summary

This dissertation analyzes the relationship between freedom and justice. More specifically, this dissertation identifies two rivaling approaches to this relationship in the works of John Rawls and Ian Carter. The key assumption of this dissertation is that Carter's way of conceiving of the relationship poses a challenge to Rawls's interpretation thereof. I will argue that the relationship between freedom and justice in Rawls is describable through two positions. Firstly, Rawls based his definition of freedom on justice and thus put forth a justice-based definition of freedom. Secondly, Rawls claimed that freedom as such cannot play an important role in determining what justice requires. Contrary to that, Carter's work prompts us to reject justice-based definitions of freedom and to use an empirical definition of freedom (called *overall freedom*) instead. Moreover, Carter argues against basing freedom on justice and for espousing what he calls a freedom-based theory of justice. Therefore, the question arises whether Carter's challenge to Rawls can be deemed successful. If the challenge is successful, we should abandon Rawls's critical stance on the notion of freedom as such and move toward a freedom-based theory of justice.

In answering this question, this dissertation makes two central points. The first is that, *pace* Carter, we can make use of both justice-based and empirical definitions of freedom. However, we should ask how both definitions of freedom can be put to good use in determining what justice requires. My argument is that we should think about definitions of freedom as tools that need to fulfill certain tasks in order to be adequate for a particular context of their use. The second central argument of this dissertation is that there are at least two ways in which we can interpret Carter's demand that we should move toward a freedom-based theory of justice. The first is a limited way of basing justice on freedom, requiring us to include a singular right to overall freedom in a liberal theory of justice. The second is a more far-reaching notion requiring us, analogously to the two moral powers in Rawls, to use overall freedom as a normative criterion for the evaluation of the entire set of rights that

people should have in a just society. I will argue that only the first way can be regarded as a possible option, yet, compared to Rawls's approach, it does not amount to a fundamentally different view of a just society.

In Chapter I, I will establish that Rawls employed a justice-based conception of freedom and rejected the notion that freedom as such can play a significant role in constructing a liberal theory of justice. Moreover, I will show why Carter's approach to the relationship between freedom and justice can be regarded as a challenge to Rawls. In Chapter II, I will analyze Carter's criticism of justice-based conceptions of freedom. I will argue that it fails to establish that we need to reject justice-based conceptions of freedom. In Chapter III, I will develop an explication of Carter's conception of freedom (*overall freedom*). I will also put forth what I call a functionalist approach to the analysis of conceptions of freedom, which is the methodological upshot of my defense of justice-based conceptions in Chapter II. In Chapter IV, I will analyze Carter's suggestion that we should move toward a freedom-based theory of justice, which can be interpreted in two ways. I will argue that only the first way, which bestows limited justificatory role on freedom as such, can be deemed a feasible one.

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Introduction

Since John Rawls's seminal *A Theory of Justice* (1971), it is widely recognized that one of the main tasks of political philosophy is to specify the principles which satisfy the demands of a just society. For Rawls, in the endeavor of specifying the principles of justice, freedom¹, in the form of the famous "basic liberties", takes center stage. To this effect, Rawls argued that producing a "convincing account of basic rights and liberties, and of their priority, was the first objective of justice as fairness" (Rawls 1999, xii).² Importantly, Rawls can be listed among those philosophers who espouse a justice-based definition³ of freedom. Indeed, Rawls regards a basic liberty as characterized by "[a] rather intricate complex of rights and duties" (Rawls 1999, 177), and the basic liberties as a whole are specified "so as to allow the adequate development and the full and informed exercise of both moral powers" (Rawls 1993, 333). The two moral powers, in turn, are necessary, as Mandle notes, for citizens "to be fully cooperating members of society" (Mandle 2015, 296).

Therefore, from a methodological point of view, under Rawls's definition, freedom is understood as the possible courses of action in keeping with his understanding of what justice is. Thus, only those courses of action count as freedoms that are in keeping with the idea of just society, i.e. "a fair system of cooperation over time, from one generation to the next" (Rawls 1993, 15). In so doing, Rawls does not begin with an independent account of what freedom is. Instead, Rawls's definition of freedom is dependent on a prior account of justice. Expressed differently, what people are free to do in Rawls is not ascertainable without knowing what his central idea of justice is, namely a fair system of cooperation. Moreover, there is no real attempt in Rawls to develop an account of what freedom *as such* is, i.e. freedom as an ideal definable independently of justice. Indeed, Rawls rejected the idea

¹ "Freedom" and "liberty" are used interchangeably.

² Note that, if not indicated otherwise, the emphasis in quotations is from the quoted authors.

³ I use "definition" and "conception" interchangeably.

of freedom as such having “a preeminent value” and it being “the main, if not the sole, end of political and social justice” (Rawls 2001, 44). Therefore, he did not think that freedom as such could do much work in his conception of justice, and developing an account of what freedom as such comes down to had little relevance to him.

There is, however, at least one other way in which one can conceive of the relationship between freedom and justice. Ian Carter has criticized basing freedom on justice and has advocated basing justice instead on freedom conceived independently of justice. The reason for this is that Carter believes that freedom has value independently of justice (Carter 1992, 41; 1995, 843-845; 1999, 69-74; 2005, 153-156; 2011, 491; 2021, 137). This position leads Carter to reject justice-based definitions of freedom maintaining that “freedom grounds justice, and not vice versa” (Carter 2015, 290). Hence, from Carter’s point of view, a justice-based definition of freedom gets the relationship between freedom and justice “the wrong way round” (Carter 1999, 69) and should be supplanted by an empirical definition of freedom. In this sense, Carter urges us to move toward a “freedom-based theory of justice” (Carter 1999, 69) which cashes in the normative potential of freedom’s independent value. Thus, although Carter does not develop his position in explicit opposition to Rawls, Carter’s way of defining the relationship between freedom and justice is seemingly diametrically opposed to the way Rawls went about the matter. Carter’s work, thus, poses a challenge to Rawls’s understanding of the relationship between freedom and justice. This raises the question, does Carter’s challenge succeed? This question has not been explicitly posed in the literature on freedom, let alone been answered. It is important to answer this question for three main reasons.

The *first* reason is that, as established, the Rawlsian project of social justice gives priority to liberty. Famously, among Rawls’s two principles of justice, the liberty principle is lexically prior to the second principle (Rawls 1993, 332; 2001, 42-43). This means that the demands of liberty need to be satisfied before other demands that justice places on society

can be addressed. In light of this, we shall say that determining what a free society requires, even if this is not the only task, is the central task of Rawls's conception of justice. Therefore, if Rawls made an error with regard to defining freedom, this has the potential of putting into jeopardy the entire Rawlsian project of specifying what justice demands of society.

The *second* reason is that there is a general methodological concern at issue here. This concern regards the proper way to establish the relationship between two of the most important concepts in political philosophy, justice and freedom. Indeed, no one could deny that freedom and justice are two of the most widely discussed concepts in the history of political philosophy. Hence, if we could establish the right way of thinking about the relationship between them, this would be a leap forward for political theorizing. For, it would provide important guidance in constructing a plausible theory of justice, be they in the spirit of Rawls or in a rival one.

The *third* reason is that answering this question has become more pressing in recent years. While there are what we may call the more "classical" accounts of defining freedom in terms of justice as found (apart from in Rawls) in Robert Nozick (1974) and Ronald Dworkin (1985, 189; 1987, 6), there is a more recent attempt of defending justice-based definitions of freedom. Ralf Bader has recently (Bader 2018A, 2018B) not only sought to explicate the inner workings of what he calls "moralized" conceptions of freedom but has also claimed that we should explicitly espouse such conceptions of freedom, and not empirical ones. His argument, contra Carter, is that empirical or what he calls "nonmoralized" conceptions of freedom "cannot play any justificatory role" in political theorizing (Bader 2018A, 162). Thus, there is renewed interest within the discipline of political philosophy to understand which approach is to be espoused. Thus, dealing with the challenge that Carter's work poses to Rawls can add a valuable contribution to this discussion. In sum, therefore, I hold it as important to provide an answer to the question as to whether the challenge Carter's work presents to Rawls can be deemed successful.

Before I will provide an outline of the chapters of this dissertation, let me pause to make some clarificatory remarks regarding some of the terms used so far and how they are connected to Carter's challenge. In doing so, it is helpful to focus on two notions in particular. The first is the notion of freedom as an independent ideal. The second is the one of freedom having independent value. Rawls can indeed be regarded as neither employing freedom as an independent ideal nor as placing importance on freedom's independent value. Contrarily, in Carter's thought these notions take center stage.

What is freedom as an independent ideal? As the name would suggest, an independent ideal is an ideal that is defined independently of other ideals. Thus, in order to conceptualize freedom as an independent ideal, we have to define freedom independently of other values, that is, we need an independent account of what freedom is. The reason why Carter holds it important to conceptualize freedom as an independent ideal is because he wants to be able to employ freedom as "an independent standard of evaluation" (Carter 2021, 130). How, then, does one define freedom independently, and how can it serve as an independent standard of evaluation?

To Carter, in order to conceive of freedom as an independent ideal, it is crucial to distinguish between moralized and non-moralized definitions of freedom. To a moralized definition of freedom, one is only free to do what it is permissible to do. Under a moralized definition of freedom, as Ralf Bader notes, "restricting people from acting impermissibly will not count as an infringement of their liberty" (Bader 2018B, 66). Moralized definitions thus use what Matthew Kramer calls "deontic categories of permissibility and impermissibility" (Kramer 2003, 60).⁴ Consequently, as Lars Moen correctly establishes, a moralized definition "is logically posterior to the normative theory it is based on" (Moen 2023, 430). This is the case, according to Moen, because we require the normative theory

⁴ They do not, however, rely solely on deontic categories, as will be seen throughout this work. I am grateful to Ian Carter and Pietro Intropi for having pushed me on this point.

“to tell us why one kind of interference makes us unfree while another kind does not” (Moen 2023, 430). Moralized definitions of freedom often spell out what is morally permissible in terms of what rights people have.⁵ Thus, a moralized definition of freedom is generally a “rights-based” definition according to which freedom is “not infringed when people are prevented from performing actions that they do not have a right to do” (Bader 2018A, 141). A rights-based definition becomes a “justice-based” one if the basis for the specification of what rights people have is done with reference to a definition of justice. This is exactly the way Rawls defined freedom as will be shown in Chapter I.

Contrary to this, a non-moralized definition of freedom regards a person as free to perform an action if that person is as a matter of fact unprevented from performing that action (Steiner 1994, 9; Carter 2011, 491). Thus, to such a definition of freedom, whether a person is free to do something becomes an empirical question. Crucially, to find out whether a person is free to do something on a non-moralized approach, questions of permissibility, rights, and justice do not enter into the equation. As Moen notes, a non-moralized definition of freedom “simply describes a state of affairs without reference to any moral evaluation” (Moen 2023, 428). We merely need to know what is possible or impossible for a person to do using what Kramer calls the “modal categories of possibility and impossibility” (Kramer 2003, 60). Abstracting from any moral considerations, on a non-moralized approach we only need to know whether it is factually true that a person is unprevented from doing something. Therefore, sometimes a non-moralized definition is also called an “empirical” or a “pure negative” (Steiner 1994) definition of freedom.

Carter’s criticism of moralized approaches is that by making use of moral considerations in defining when people are free or unfree to do something, we do not have an independent account of what freedom is (Carter 1999, 71). The reason for this is, as Bader

⁵ As we will see, the Hohfeldian framework (Hohfeld 1919) for the analysis of rights appears to be particularly suitable to flesh out a moralized account of freedom.

notes, that employing a moralized definition “requires one to treat facts about liberty as being derivative” (Bader 2018A, 162). Indeed, per definition, moralized approaches require us to rely on other ideals to define what freedom is. Often in his work, Carter takes as the canonical form of moralized approaches to freedom the justice-based definitions found in Dworkin and Nozick where the rights that specify what freedoms people have are grounded in their respective theories of justice (Carter 1999, 69-74; 2011, 491; 2021, 138). The worry is, as Cohen noted before Carter, that employing justice-based definitions of freedom, “we do not know what liberty is until we have a freedom-independent characterization of justice” (Cohen 1995, 62). However, according to Carter, if we do not provide an account of what freedom is independently of what is just (or morally permissible more generally), freedom “gets sacrificed as an ideal” (Carter 1999, 71).

In other words, Carter’s argument is that if we define freedom as what is already just, then freedom itself cannot serve as an ideal to define what justice requires. In that sense, justice is no longer grounded (or based) in freedom (Carter 2015, 290). Instead, justice grounds freedom. Carter’s complaint is that if we define freedom, for instance, as what a certain structure of rights allows us to do, then we cannot use freedom as a standard for evaluating that very same structure of rights. According to Carter, we cannot say of that structure that it is an adequate one because it is good for freedom. For we have already defined freedom in terms of those very rights. If we, however, refrain from defining freedom in terms of rights “then freedom can be considered an independent value the promotion or preservation of which can supply a reason for supporting a particular structure of rights” (Carter 2011, 491). Thus, freedom as an independent ideal can help us flesh out what justice requires. If freedom is given such a role as an independent standard of evaluation, we can construct what Carter calls a “freedom-based theory of justice” (Carter 1999, 69), a theory of justice that incorporates freedom as an independent ideal harnessing its supposed justificatory potential.

Crucial for Carter's position is not only the idea of giving an independent account of what freedom is, but also that freedom has independent value. One thing is to define freedom independently so as to allow for the possibility of using it as an independent standard of evaluation; another is to show that the independent ideal is getting to something of value. If freedom does not have value independently, then conceiving of freedom as an independent ideal might not get us very far after all. Hence, what is freedom's independent value?

To Carter, freedom's independent value is the value that freedom has *as such*, i.e. the value of freedom *qua* being freedom. Carter defines this form of value as the value freedom has "independently of the value we attach to the particular things it leaves us free to do" (Carter 1995, 825). Contrariwise, the "*nonindependent value*" is the value that freedom has by virtue of being a means to ends other than freedom (Carter 1995, 824).⁶ According to Carter, the independent "value of a freedom or set of freedoms is its value in terms of the good 'freedom'" (Carter 1995, 823). This view implies that different liberties such as freedom of association and freedom of worship have something in common. This something is their instantiating freedom as such (Carter 1995, 824).

What freedom as such is under this view is the mere possibility of action. Freedom of association and freedom of worship, albeit being different in terms of the specific purposes they serve, have in common that they both instantiate the possibility of action. To Carter, the mere fact that they instantiate the possibility of action is a good thing and we should be concerned with having more possibility of action rather than less. To Carter, this view naturally leads to our having an interest in measuring how much freedom as such (or "overall freedom") we have at our disposal (Carter 1999, 31).

Note that, according to Carter, the independent value of freedom comes in more than one form. Carter distinguishes between four of them: unconditional value, intrinsic value,

⁶ In this context, Carter also speaks of the non-specific and the specific value of freedom (Carter 1999, chapter 2).

non-specific instrumental value, and non-specific constitutive value. His argument for freedom's independent value relies mainly on a defense of the non-specific instrumental value and the non-specific constitutive value. Thus, in order for Carter's account of the independent value of freedom to work, we do not have to either believe that freedom is unconditionally valuable nor that it is intrinsically valuable (see Carter 1999, chapter 2).

Crucially, Carter claims that if we do not define freedom as an independent ideal, we cannot grasp the independent value of freedom. Conceiving of freedom as having independent value requires us to think of freedom as something independent of other ideals. Hence, the two notions – freedom as an independent ideal and freedom's independent value – are mutually supportive and often appear together in Carter's work. What is required of us in order to conceive of freedom as an independent ideal and how freedom's independent value works will be further explained throughout this work. However, the central take-away of these remarks should be that these two notions are crucial to the way Carter thinks about the relationship between freedom and justice, yet, that they do not play a role in Rawls's account of that relationship at all.

In what follows, I will outline the main arguments of this work, establishing that the challenge which Carter's work poses to Rawls can be regarded as successful in some respects while failing in others. More specifically, there is justificatory potential associated with understanding freedom as an independent ideal having independent value. Indeed, as we will see, freedom as such (i.e. *overall freedom*) can play a role in justifying certain egalitarian redistributive measures. Understanding freedom as an independent ideal enables us to make an appeal to freedom in arguing for an egalitarian approach to the distribution of financial means. The challenge fails, however, where Carter makes the claim that there is something wrong in principle with defining freedom *also* in terms of justice. There is nothing wrong with employing more than one definition of freedom, once we understand which functions they can play in normative theorizing. Moreover, the idea of moving toward a freedom-based

theory of justice either seems to produce conclusions quite consistent with Rawls's own framework or they appear to lead to counterintuitive consequences.

In Chapter I, I will establish the gap this research seeks to fill and why it is important to do so. I expound on how Rawls's conception of *justice as fairness* works, and I will argue that Rawls put forward what we call a justice-based definition of freedom. I will show that Rawls bases his definition of freedom on justice by defining freedom in terms of certain essential basic liberties understood as certain fundamental liberal-democratic rights (Rawls 1999, 53). I will also highlight that Rawls distinguishes between liberty and the so-called "worth of liberty" (Rawls 2001, 149), which mirrors the distinction between formal and substantive freedom. In doing so, I will argue that Rawls was indeed not only concerned with formal freedom but was also preoccupied with substantive freedom. I will also demonstrate why Rawls chose to not regard freedom as such as being an important normative concern for justice. This will be done by considering the criticism which HLA Hart (Hart 1973) leveled against Rawls's conception of liberty found in the 1971 edition of *A Theory of Justice* (1971) and Rawls's subsequent response to Hart (Rawls 1982, 1993).

Afterwards, I will establish that Carter's position on the relationship between freedom and justice can be regarded as an important challenge to the Rawlsian project. Carter indeed develops an interesting argument against defining freedom in terms of justice and for understanding freedom as an independent ideal (Carter 1995, 1999). Moreover, I will argue that the challenge has not yet been evaluated constituting the gap this dissertation seeks to fill. Further, I will argue that it is important to answer the question as to whether the challenge which Carter's work poses to Rawls can be regarded as successful.

In Chapter II, I will assess Carter's claim that justice-based conceptions of freedom are in some sense inferior to empirical ones. I will argue that the main difference between empirical and justice-based conceptions is the latter's reliance on what Kramer calls deontic categories (Kramer 2003, 60) to spell out what a person is free to do. I will highlight,

however, that justice-based conceptions of freedom do not only rely on deontic categories. Since justice-based conceptions serve to evaluate empirical situations, they cannot rely on deontic categories alone. Afterward, I will show how Carter builds on Gerald Cohen's criticism of justice-based conceptions of freedom (Cohen 1988, 1995, 2011; Carter 1999, 2011, 2021). I will ultimately argue that there should be no general condemnation of justice-based conceptions of freedom. Defining freedom in terms of justice is not in itself a problem, for it does not require us to either deny that freedom should also be understood empirically or that freedom has an independent value. Instead, I will argue, the two conceptions of freedom can be regarded as fulfilling different functions.

That being said, however, Carter believes that one of the major reasons we should reject justice-based conceptions of freedom is because he would like to ask the question as to how well a given structure of rights does in terms of promoting freedom (in an empirical sense), for he believes that employing a justice-based definition of freedom makes it impossible to pose that question (Carter 2011, 491). I will rebut Carter's claim by arguing that one can employ a justice-based and an empirical conception of freedom at different stages in normative theorizing. Therefore, Carter's question can be posed in a pluralist framework that incorporates both conceptions. Moreover, I will argue that it is intriguing to ask whether we should indeed base the justification of a structure of rights, in part, on freedom as an independent ideal. This question will be answered in Chapter IV.

In Chapter III, I will lay the foundations to answer this question. I will describe in what sense Carter conceives of freedom as an independent ideal that has an independent value. The two central steps in Carter's argument are to provide a definition of freedom as such and to furnish an account of why this kind of freedom has value. Carter provides a definition of freedom as such called *overall freedom*. Constructing this definition Carter conceives of freedom as a quantitative attribute that is in principle measurable. More specifically, overall freedom is defined as "the expected availability of sets of compossible

actions” (Carter 1999, 245), which I argue, building on Hillel Steiner (1994) should be operationalized as the *expected undisturbed continuous possession of physical components of action*. Carter provides an account of the value of overall freedom that relies centrally on distinguishing between the specific and non-specific value of freedom. The specific value is dependent on seeing specific freedoms as instruments in the pursuit of ends other than freedom. The non-specific value is the value freedom has independently of the specific ends particular freedoms allow one to pursue (see Carter 1995, 1999, 33-34). I will focus in particular on Carter’s claim that overall freedom has non-specific instrumental as well as non-specific constitutive value and that they serve to justify our having a fundamental interest in a certain degree of overall freedom. I will argue that the non-specific instrumental value does not seem to be able to establish by itself that more freedom rather than less is a good thing. However, the notion of freedom’s non-specific constitutive value helps overcome the limitation associated with the non-specific instrumental value.

After having shown how Carter establishes freedom as an independent ideal that has an independent value, I will put forward what I call a functionalist approach to the analysis of conceptions of freedom. This approach is the methodological upshot of my defense of justice-based definitions in Chapter II. I will argue, expanding upon the framework for the analysis of conceptions of freedom developed by Keith Dowding and Martin van Hees (2007), that a conception of freedom in order to be an adequate tool for normative theorizing needs to fulfill three tasks which I term *The Linguistic Task* (Task I), *The Value Task* (Task II), and *The Determination Task* (Task III). Task I is fulfilled if a conception of freedom finds some roots in ordinary language. Task II is completed if that conception of freedom explains clearly why that kind of freedom is valuable. Task III is completed if a conception of freedom contributes to painting a plausible picture of what justice requires.

I will then argue that there are plausibly many conceptions of freedom that complete successfully Task I and Task II. However, that does not mean that a given conception of

freedom is appropriate for a particular theoretical context. The theoretical context I am here concerned with is the context of constructing a liberal theory of justice. Based on this framework, I will argue that overall freedom is indeed able to complete Task I and II, however, it is important to inquire whether it can also fulfill Task III. In this context, Carter's claim that we should move toward a freedom-based theory of justice is relevant (Carter 1999, 68-69). More specifically, Carter suggests that we should be able to justify a set (or "structure") of rights based on it being good for overall freedom (Carter 2011, 491; 2021, 137). In order to see how overall freedom could pass Task III, I will thus propose to analyze Carter's proposal of moving toward a freedom-based theory of justice by asking whether we can indeed justify rights based on our supposed fundamental interest in overall freedom.

In Chapter IV, I will assess Carter's proposal that we should move toward a freedom-based theory of justice. For my purposes here, moving toward a freedom-based theory of justice signifies that overall freedom should do some fundamental work in the justification of the set of rights at the heart of a liberal theory of justice. To my mind, moving towards a freedom-based theory of justice can come in two ways. The first is that we can argue that people's interest in overall freedom justifies a *singular right* to overall freedom. The second is that people's interest in overall freedom justifies using it as an *across-the-board criterion* for the justification of the entire set of rights.

I will argue that the first way of moving toward a freedom-based theory of justice is in principle a reasonable proposal. Moreover, I will also argue that the first way, when compared to Rawls's *justice as fairness*, does not lead to a substantially different picture of what justice requires. The reason for this is that in *La libertà eguale* (2005) Carter cashes in the idea of a singular right to overall freedom in terms of a distributive mechanism for financial means, and I will argue that this mechanism is generally compatible with the framework of rules which Rawls developed for the distribution of financial means. Further, I will argue that moving toward a freedom-based theory of justice through this first way

enables theorists to appeal directly to freedom in justifying egalitarian distributive measures. However, I will note that this justificatory strategy will likely not convince anyone who is not in favor of liberal egalitarianism in the first place.

As regards the second way of moving toward a freedom-based theory of justice, which requires us to use overall freedom as an *across-the-board criterion*, things stand differently. In fact, using overall freedom as an *across-the-board criterion* leads to some counterintuitive consequences. I will show this by constructing what I call The Overall Freedom Test for the justification of rights. Building on Steiner (1994, 210), I will argue that employing this test requires us to think about rights in terms of claims that normatively protect varying degrees of overall freedom. Our interest in overall freedom should, then, give us a reason to choose set of rights *a* over set of rights *b*, if *a* protects more overall freedom than *b*. Similarly, we have a reason to prefer right *x* over right *y*, if *x* protects more overall freedom than *y*.

As I will show, however, this leads to counterintuitive consequences. These are firstly that we are dependent on actual measurements of overall freedom to justify rights; secondly, building on an argument developed by Matthew Kramer (2003 chapter 5), that our right to freedom of speech would likely score very poorly on such a test; thirdly, that this test plausibly allows that political rights are traded off for other kinds of rights if that leads to a more optimal distribution of overall freedom. Afterwards, I will offer some reflections regarding the second way of moving toward a freedom-based theory of justice suggesting ways to overcome the problems associated with it.

Chapter IV will be followed by a conclusion in which I summarize my findings. Apart from providing some general conceptual and methodological reflections, I will conclude that Carter's challenge can be regarded as successful, in the sense that it points to the importance of people actually having a degree of overall freedom and that overall freedom can do some important normative work within a theory of justice. Overall freedom

can be used as a way to justify egalitarian redistributive measures. Thus, Rawlsians should take note of the justificatory potential of overall freedom. However, overall freedom cannot serve the more fundamental justificatory role of functioning as an *across-the-board criterion* for the selection of rights. Moreover, Carter's challenge fails where he aims to make the exclusionary claim to the effect that we should refrain from defining freedom also in terms of justice. It is indeed possible and illuminating to employ two conceptions of freedom.

Chapter I – John Rawls and Ian Carter on Freedom and Justice

Introduction

In this chapter, I identify the gap I am seeking to fill with this project. The gap regards the relationship between freedom and justice. More specifically, I argue that Ian Carter's work poses a challenge to Rawls's approach to the relationship between freedom and justice. I will argue that Rawls put forward a definition of liberty we now associate with a justice-based definition of freedom. More specifically, I will argue that Rawls's justice-based definition of freedom is centered around the notion of the basic liberties understood as what Hillel Steiner has called "vested liberties", permissions protected by duties (Steiner 1994, 89). I will argue that in Rawls's theory, these vested liberties are derived from Rawls's understanding of "society as a fair system of cooperation among citizens viewed as free and equal" (Rawls 2001, 155). Moreover, I will explain why Rawls denied that freedom as such could play a fundamental role in his conception of justice.

I will argue that Rawls had been prompted by HLA Hart to make explicit his defining freedom in terms of the basic liberties as well as his rejecting the significance of freedom as such for his project of *justice as fairness*. In "Rawls on Liberty and Its Priority" (1973), Hart had raised important concerns as to the interpretation of the relationship between freedom and justice in the original edition of *A Theory of Justice* (1971). In this article, Hart suggested that freedom as such could not be what was meant by liberty in Rawls. In response to Hart's criticism, Rawls provided an argument for understanding freedom in terms of the basic liberties and rejected the normative significance of freedom as such (Rawls 1982). Rawls indeed thought that Hart's critique had pointed out that "one of the most serious weaknesses [of *Theory of Justice* 1971 edition] was in the account of liberty" (Rawls 1999, xii). Thus, I will argue that the relationship between freedom and justice in Rawls is characterized by two central arguments: one for a justice-based conception of freedom and another against the normative significance of freedom as such.

I regard Ian Carter's work as a challenge to the way Rawls conceived of the relationship between freedom and justice. Carter suggests that thinkers who use, as Rawls did, a justice-based definition "get freedom and justice the wrong way round" (Carter 1999, 69). Carter criticizes that thinkers employing justice-based definitions of freedom do not commence with an understanding of freedom independent of justice and reach conclusions about justice from there. Instead, to Carter, they begin with a concern for justice and from there address concerns for freedom. Carter suggests that we begin with an independent account of what freedom is and why it is valuable, and in turn ground justice in these considerations. In that sense, Carter urges us to "endorse a freedom-based theory of justice" (Carter 1999, 69).

I will highlight that although Carter's position is not explicitly developed as a criticism of Rawls (often Carter focuses his attention on the works of Ronald Dworkin and Robert Nozick), Carter's work poses a challenge to the manner in which Rawls conceived of the relationship between freedom and justice. In this project, I will weigh in on the matter by asking whether Carter's position on the relationship between freedom and justice is preferable to Rawls's. I will ask, can Carter's challenge to Rawls be deemed successful?

In section 1, I will outline Rawls's project of a liberal theory of justice. In section 2, I will argue that Rawls's conception of freedom is justice-based and explain Rawls's argument against the idea that freedom as such is an important normative concern for a theory of justice. In section 3, I will explain the challenge that Ian Carter's work poses to Rawls's account of the relationship between freedom and justice. In section 4, I will identify the research gap I am here concerned with.

1. Rawls's Theory of Justice

Before we move to Rawls's account of the relationship between freedom and justice it is important to give a brief overview over the Rawlsian project itself. In section 1, I shall do so.

Justice was the central concern of Rawls's political philosophy. According to Rawls, justice is about the organization of society, which involves the "assignment of rights and duties" and "the appropriate distribution of the benefits and burdens of social life" (Rawls 1999, 47). In Rawls, the preferred way of thinking about the organization of society is called *justice as fairness*. According to Rawls, "[t]he most fundamental idea in this conception of justice [*justice as fairness*] is the idea of society as a fair system of social cooperation over time from one generation to the next" (Rawls 2001, 5; my insertion). Put in another way, *justice as fairness*, according to Rawls, provides a blueprint for a just-society which is understood "as a scheme of cooperation for reciprocal advantage regulated by principles which persons would choose in an initial situation that is fair" (Rawls 1999, 29).

According to Rawls, the fundamental challenge for a conception of justice is the need to deal with the two circumstances of justice. They render it challenging to find a conception of justice that people would sign up to. According to Rawls, the first of these circumstances is the "moderate scarcity [of resources] and the necessity of social cooperation for all to have a decent standard of life" (Rawls 2001, 84; my insertion); the second is the "fact of reasonable pluralism", which is the "fact that in a modern democratic society citizens affirm different, and indeed in-commensurable and irreconcilable, though reasonable, comprehensive doctrines in the light of which they understand their conceptions of the good" (Rawls 2001, 84). As Rivera-Castro rightfully argues, these two circumstances of justice, then, create the "background conditions in which the question of justice arises" (Rivera-Castro 2015, 92).

Indeed, if the first circumstance of justice were not present, and our world were characterized by an extreme abundance of natural resources “such that there was plenty to meet everyone’s needs, there would be no need for principles of distributive justice because there would be no occasion for conflicting claims” (Rivera-Castro 2015, 93). Thus, we would not have to reach an agreement on who gets what resources. Similarly, if the second circumstance of justice were not the case, and everyone followed the same conception of the good, then the need to deal with the fact of pluralism would not exist either. In Rawls, as Pete Murray notes, the notion of a conception of the good is tied to the notion of a comprehensive doctrine (Murray 2015, 130).

According to Voice, in Rawls a comprehensive doctrine is to be understood as “a set of beliefs affirmed by citizens concerning a range of values, including moral, metaphysical, and religious commitments, as well as beliefs about personal virtues, and political beliefs about the way society ought to be arranged” (Voice 2015, 126). According to Voice, then, these beliefs “form a conception of the good and inform judgments concerning ‘what is of value in life, the ideals of personal character, as well as ideals of friendship and of familial and associational relationships, and much else that is to inform our conduct, and in the limit to our life as a whole’” (Voice 2015, 126). Crucially, people’s comprehensive doctrines and the affiliated conceptions of the good do conflict in practice. For instance, if everyone pursued the same Zen-Buddhist conception of the good, the question about how to deal with different spiritual and religious understandings would not arise. However, as Rawls reasonably assumes “citizens cannot agree on any moral authority, say a sacred text or a religious institution or tradition” (Rawls 2001, 15). Therefore, modern society is characterized by a diversity of ends people pursue, some of which are opposed to each other. Thus, we have to find a way to accommodate this plurality.⁷

⁷ Speaking of *reasonable* pluralism, of course, implies that there are certain comprehensive doctrines and conceptions of the good which are unreasonable. Those unreasonable doctrines and conceptions do not need to be accommodated.

Assuming that these two circumstances hold, Rawls's argument is that the best way of arriving at an agreement on a conception of justice, with its function of distributing the benefits and burdens of social cooperation as well as assigning the rights and duties to the members of society, is under "conditions that are fair" (Rawls 1993, 24). The key idea is for the principles of justice, as Norman Daniels notes, to "be acceptable to all citizens" (Daniels 2003, 246). The trouble is of course that in practice we can never achieve a situation which is completely fair for all, from which we could determine, by way of public discourse, the principles for the creation of a just society. Yet, what we can do is ask ourselves which principles *would* people choose were they situated in an initial situation which is equally fair for all.

In order to answer this question, Rawls makes use of a thought-experiment called the "original position". This experiment prompts us "to imagine that those who engage in social cooperation choose together, in one joint act, the principles which are to assign basic rights and duties and to determine the division of social benefits" (Rawls 1999, 10). Famously, Rawls wants us to think of the original position as one in which people are placed behind a "veil of ignorance" to define the principles of justice. According to Rawls, the gist of the veil of ignorance is that "no one knows his place in society, his class position or social status, nor does any one know his fortune in the distribution of natural assets and abilities, his intelligence, strength, and the like" (Rawls 1999, 11). Moreover, according to Rawls, in this hypothetical situation, "the parties do not know their conceptions of the good or their special psychological propensities" (Rawls 1999, 11). Thus, according to Rawls, the central idea is that in this hypothetical situation "no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances" (Rawls 1999, 11). Indeed, Rawls follows that since "all are similarly situated and no one is able to design principles to favor his particular condition, the principles of justice are the result of a fair agreement or bargain" (Rawls 1999, 11).

Importantly, as Pete Murray establishes, the persons in the original position are aware of the fact that they do have a determinate conception of the good, however, they do not know the exact content of their conceptions of the good (Murray 2015, 131). Hence, to Murray, the persons have to come up with appropriate principles of justice which “will allow them rationally to form and pursue their reasonable system of ends whatever it turns out to be” (Murray 2015, 131). Thus, the outcome of such a thought experiment should be principles of justice which are justifiable to everyone irrespective of their conceptions of the good, for they would accommodate all reasonable conceptions of the good.

The resulting principles of justice are thought of by Rawls as regulating the so-called “basic structure” of society (Scheffler 2015, 213). Rawls defines the basic structure as “the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation” (Rawls 1999, 6). In that sense, according to Rawls, “[t]he basic structure is the background social framework within which the activities of associations and individuals take place” (Rawls 2001, 10). According to Rawls, part of the basic structure are “[t]he political constitution with an independent judiciary, the legally recognized forms of property, and the structure of the economy (for example, as a system of competitive markets with private property in the means of production), as well as the family in some form” (Rawls 2001, 10).

According to Rawls, within the thought experiment of the original position, people would come up with two principles of justice for the organization of the basic structure of society that specify the fair terms of cooperation. In *Justice as Fairness – A Restatement* (2001), Rawls defines these principles thus:

“(a) Each person has the same indefeasible claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all; and

(b) Social and economic inequalities are to satisfy two conditions: first, they are to be attached to offices and positions open to all under conditions of fair equality of opportunity; and second, they are to be to the greatest benefit of the least-advantaged members of society (the difference principle)” (Rawls 2001, 42-43).

For Rawls, these two principles of justice are to be applied in a “four-stage sequence” (Rawls 1999, 175). According to Rawls, the first is when “the parties adopt the principles of justice behind a veil of ignorance” (Rawls 2001, 48). The second is the stage “of the constitutional convention” in which the principles of justice are used to draw up a constitution (Rawls 2001, 48). The third is the “legislative stage in which laws are enacted as the constitution allows and as the principles of justice require and permit” (Rawls 2001, 48). The fourth is the “stage in which the rules are applied by administrators and followed by citizens generally and the constitution and laws are interpreted by members of the judiciary” (Rawls 2001, 48).⁸

Crucially, Rawls understands these principles as applying in lexical order. According to Rawls, a lexical order is “an order which requires us to satisfy the first principle in the ordering before we can move on to the second, the second before we consider the third, and so on” (Rawls 1999, 38). Thus, Rawls concludes that “[a] principle does not come into play until those previous to it are either fully met or do not apply” (Rawls 1999, 38). In the context of the two principles referenced earlier, according to Rawls, this entails “ranking the principle of equal liberty prior to the principle regulating economic and social inequalities” (Rawls 1999, 38).

⁸ Note that in Rawls the constraints initially posed on the knowledge of the persons involved are progressively relaxed throughout the stages. In the original position, the knowledge of people faces the most restrictions. According to Rawls “[w]hile they know the first principles of social theory, the course of history is closed to them; they have no information about how often society has taken this or that form, or which kinds of societies presently exist” (Rawls 1999, 175). These restrictions are then progressively lifted until finally in the fourth stage “all restrictions are lifted” (Rawls 1999, 176). For a discussion of the four-stage sequence, see Macleod 2013.

This entails, according to Rawls, that “[a] basic liberty covered by the first principle can be limited only for the sake of liberty itself, that is, only to insure that the same liberty or a different basic liberty is properly protected and to adjust the one system of liberties in the best way” (Rawls 1999, 179). Thus, Rawls argues, “whenever the basic liberties can be effectively established, a lesser or an unequal liberty cannot be exchanged for an improvement in economic well-being” (Rawls 1999, 131). This means, according to Rawls, that “only when social circumstances do not allow the effective establishment of these basic rights that one can concede their limitation; and even then these restrictions can be granted only to the extent that they are necessary to prepare the way for the time when they are no longer justified” (Rawls 1999, 131). Therefore, Rawls concludes, “[t]he denial of the equal liberties can be defended only when it is essential to change the conditions of civilization so that in due course these liberties can be enjoyed” (Rawls 1999, 131).⁹

With regard to the four-stage sequence introduced earlier, according to Rawls, this means that the basic liberties principle applies to the constitutional stage, requiring that the “fundamental liberties of the person and liberty of conscience and freedom of thought be protected and that the political process as a whole be a just procedure” (Rawls 1999, 174-175). The second principle, Rawls argues, comes into play at the legislative stage and “dictates that social and economic policies be aimed at maximizing the long-term expectations of the least advantaged under conditions of fair equality of opportunity, subject to the equal liberties being maintained” (Rawls 1999, 175). Consequently, according to Rawls, “the priority of the first principle of justice to the second is reflected in the priority of the constitutional convention to the legislative stage” (Rawls 1999, 175).¹⁰

⁹ In this spirit, Rawls argued that there is actually another principle, which is prior to the first principle of justice. The idea is that the prior principle would require that “basic needs be met, as least insofar as their being met is a necessary condition for citizens to understand and to be able fruitfully to exercise the basic rights and liberties” (Rawls 2001, 44).

¹⁰ The idea of distinguishing between constitutional essentials and legislative concerns is mirrored in the notion advanced by Rawls that it is easier to gain agreement on the constitutional essentials than on other matters of justice. Indeed, to Rawls, people in the original position will be able “to gain agreement on what those [constitutional] essentials should be, not in every detail, of course, but in the main outlines” (Rawls 2001, 49).

In summation, Rawls's conception of justice seeks to establish principles for the organization of a society that is characterized by the scarcity of resources and reasonable pluralism. In this endeavor, concerns for liberty are lexicographically prior to concerns for social and economic inequalities.

2. Rawls's Justice-Based Conception of Freedom

In section 2, I will provide an explication of what Rawls meant by liberty and argue that it was a justice-based conception of freedom. This fact has not been pointed out sufficiently in the freedom-discourse. Under Rawls's justice-based conception, freedom is spelled out in terms of the fundamental rights we should enjoy from a liberal democratic perspective. These rights are individuated with regard to their ability to establish the conditions under which the development and exercise of the two moral powers is possible (Rawls 1993, 293). I will also argue that the worth of liberty is a crucial notion within the context of Rawls's account of freedom. Finally, I will show how Rawls came to reject the notion that liberty as such should be given priority in *justice as fairness*.

2.1 Rawls's Moralized Conception of Freedom

In this section, I will show that Rawls put forward a moralized conception of freedom. I will also demonstrate that the basic liberties are to be understood as what Hillel Steiner would call "vested liberties" (Steiner 1994, 89).

However, according to Rawls, the principles established by the second principle of justice are "more demanding". Hence, finding agreement on them is more difficult, and most of the specification of these principles is to be left to the legislative stage (Rawls 2001, 47-48).

When Rawls talked about the concept of liberty in *A Theory of Justice. Revised Edition* (1999), he declared wanting to avoid disputes about the definition of freedom. What he meant by this is that he chose to leave aside issues such as the “controversy between the proponents of negative and positive liberty as to how freedom should be defined” (Rawls 1999, 176). For example, building on Benjamin Constant, Rawls found it important to deal with the claim that the modern liberties were more important than the ancient ones,¹¹ but he thought that “[q]uestions of definition can have at best but an ancillary role” (Rawls 1999, 177).

Now, this last sentence might seem a bit perplexing. Certainly Rawls himself gave a definition of freedom and the way he defined freedom was crucial for his project. What I take Rawls to mean here by using the expression “ancillary role”, however, is that answering questions of the definition of freedom is not an end in itself. Definitions of freedom are to be given in a particular context, and the context for Rawls was his project of determining what justice requires. Thus, whatever Rawls said about freedom was tailored toward the issue of justice conceived from a liberal-democratic perspective. For example, in pondering the distinction between the liberty of the ancients and the liberty of the moderns, what counted for Rawls was not that we can define freedom in different ways. It appears it was unimportant to Rawls that people may call those liberties aimed at political participation “ancient”, while they term “modern” the civil ones aimed at the protection of the private sphere of the individual. Instead, to Rawls it was much more significant to be able to say what role, if any, the two kinds of liberties could play in a plausible conception of justice. In this context, rather than getting bogged down by matters of definition, Rawls found it, for instance, to be crucial to highlight, as Robert S. Taylor notes, that the two classes of liberties, the civil and political ones, are considered to be of equal weight (Taylor 2011, 152).¹²

¹¹ On that distinction, see Constant 1819.

¹² Note, however, in *Political Liberalism* Rawls argues that in modern society “the political liberties are thought to have a lesser place in most persons’ conceptions of the good” (Rawls 1993, 299) and suspects that the “role

Despite all this, for the purpose of constructing *justice as fairness*, Rawls came up with a determinate definition of freedom. More specifically, Rawls thought of liberty in terms of the so-called “basic liberties”. The basic liberties are understood as highly important particular liberties that people ought to enjoy equally if the demands of justice are to be fulfilled. Rawls argued that the source for the basic liberties was to be found, “for example, in various bills of rights and declarations of the rights of man” (Rawls 1982, 6). Thus, Rawls defined freedom in accordance with what the persons in the original position would declare are the fundamental rights that free and equal citizens must possess. As Peter de Marneffe notes,

“Rawls specifies basic liberties by a list, but presents different lists in different places. The following liberties appear on at least one list: freedom of thought; liberty of conscience; freedom of association; freedom of the person (also called ‘the freedoms specified by the liberty and integrity of the person’[...]); the freedom to own personal property; political liberty, including the right to vote and to be eligible for public office, freedom of political speech, and freedom of assembly; and the rights and liberties covered by the rule of law, including freedom from arbitrary arrest and seizure” (De Marneffe 2015, 47).

Thus, we can see that Rawls’s basic liberties comprise both what we may call political rights aimed at securing citizens opportunity to participate in politics, as well as civil rights such as the freedom from arbitrary arrest and seizure.

What does it mean to have freedom in terms of the basic liberties? Building on MacCallum’s seminal paper “Negative and Positive Freedom” (1967), Rawls believed that “any liberty can be explained by a reference to three items: the agents who are free, the restrictions or limitations which they are free from, and what it is that they are free to do or

of the political liberties is perhaps largely instrumental in preserving the other liberties” (Rawls 1993, 299). Yet, even if this is the case, Rawls argued, “it is no bar to counting certain political liberties among the basic liberties and protecting them by the priority of liberty” (Rawls 1993, 299). In this context, see also Jürgen Habermas’s and Robert Taylor’s criticisms of Rawls (Habermas 1995; Taylor 2011).

not to do” (Rawls 1999, 177).¹³ According to Rawls, “persons are at liberty to do something when they are free from certain constraints either to do it or not to do it and when their doing it or not doing it is protected from interference by other persons” (Rawls 1999, 177). The example Rawls gave in this context is liberty of conscience. He wrote that “[i]f, for example, we consider liberty of conscience as defined by law, then individuals have this basic liberty when they are free to pursue their moral, philosophical, or religious interests without legal restrictions requiring them to engage or not to engage in any particular form of religious or other practice, and when other men have a legal duty not to interfere” (Rawls 1999, 177). This means that to Rawls, “not only must it be permissible for individuals to do or not to do something, but government and other persons must have a legal duty not to obstruct” (Rawls 1999, 177-178). From Rawls’s point of view, then, “[a] rather intricate complex of rights and duties characterizes any particular basic liberty” (Rawls 1999, 177).

There are three aspects of this definition which are worth pointing out. *Firstly*, in order to have a basic liberty to do something we need to have the legal permission to engage in that conduct. Therefore, in Rawls’s conception of freedom, for something to count as a basic liberty, it must be permitted by the legal order. Rawls thus put forth a normative conception of freedom employing what Matthew Kramer calls “the deontic categories of permissibility and impermissibility” (Kramer 2003, 60).¹⁴ However, permissibility is a necessary but not a sufficient condition for the establishment of a basic liberty. Basic liberties, to Rawls, imply legal duties in other people not to interfere. Thus, since the permission is necessarily accompanied by a duty protecting it from interference, basic liberties involve both what Wesley Newcomb Hohfeld called privileges (or “liberties”) and

¹³ Note that the original formula put forward by MacCallum is broader in nature. In the original wording freedom is described as “always of something (an agent or agents), from something, to do, not do, *become*, or not *become* something” (MacCallum 1967, 314; my emphasis). Therefore, MacCallum also refers to the freedom to become something, next to the freedom to do something.

¹⁴ Note that Rawls’s conception of freedom is not merely deontic. For there are also empirical elements incorporated in it. A merely deontic conception of freedom would not incorporate any empirical considerations. However, violating people’s rights is an empirical phenomenon and constitutes an abridgement of freedom under Rawls’s conception. This point will be developed further in Chapter II.

claim-rights (or rights “in the strict sense”) (Hohfeld 1919, 38-39). Therefore, what Rawls was referring to when speaking of basic liberties is what Hillel Steiner calls “vested liberties” (Steiner 1994, 89), privileges that are protected from interference by duties.

It makes perfect sense for Rawls to stipulate that permissions ought to be accompanied by duties in the case of the basic liberties. Indeed, our being permitted to do x does not entail a duty in other people not to interfere with our doing x (Simmonds & Neoh 2022, 318). Yet, the basic liberties are important enough so as to warrant protection through duties. Moreover, the fact that Rawls defined the basic liberties in terms of duty-protected permissions also suggests that there are non-basic liberties, i.e. things that we are permitted to do but that are not protected by duties.¹⁵

Secondly, Rawls’s normative conception of freedom is a moralized conception. This is the case since the basic liberties are not those vested liberties that people merely happen to have by legal fiat. Clearly, the fact that people have vested liberties does not tell us anything about the content of them. In Rawls, however, the basic liberties are to have a certain content and hence need to be morally justified. More specifically, in Rawls, the content of the basic liberties needs to be in keeping with justice. Confirming this interpretation, Alistair Macleod observes, “[i]t’s always *moral* justification of a certain kind that Rawls has in mind, so it’s safe to assume that the rights to which he gives recognition are always regarded as *moral* rights” (Macleod 2015, 732). Thus, Macleod argues that in Rawls legal rights “are simply a subclass of moral rights – those moral rights for which legal protection and enforcement would be appropriate” (Macleod 2015, 732).

Thus, although to the best of my knowledge Rawls did not distinguish between liberty and license, given that he stipulates permissibility as a precondition for having a basic liberty, it stands to reason that he would have regarded the violation of a basic liberty as an

¹⁵ In Chapter IV, I will demonstrate how Rawls’s conception of freedom can be extended making use of the entire framework of Hohfeldian relations. I am refraining from doing so here because nothing of the argument in Chapter I turns on it.

impermissible act and thus an act of license. Indeed, according to Ralf Bader, to moralized definitions of freedom “impermissible actions, are not ones that one is free to perform [...], but instead belong to mere license” (Bader 2018A, 143). Thus, I am suggesting that Rawls thought about freedom in a similar way to thinkers such as John Locke who famously made use of the distinction between liberty and license in the *Second Treatise of Government* (Locke 2016 [1689], 5).¹⁶

Thirdly, Rawls does not require people to exercise their basic liberties in order to count as free. The basic liberties being secured and not exercised is what counts the most for Rawls. Thus, Rawls implies what Charles Taylor calls an “exercise-concept” of freedom (Taylor 1985, 213). This can be seen, I believe, most clearly where Rawls rejected the idea that *justice as fairness* requires citizens to participate in politics in order to count as free and equal citizens. According to Rawls, “assigning a central place to political life is but one conception of the good among others” (Rawls 1993, 330), and he assumes that “[g]iven the size of a modern state, the exercise of the political liberties is bound to have a lesser place in the conception of the good of most citizens than the exercise of the other basic liberties” (Rawls 1993, 330).

Hence, in light of the fact that the political liberties are part of the basic liberties and Rawls explicitly denied that citizens need to exercise them, it would indeed be implausible to argue that a person can only be free when exercising her basic liberties. Instead, Rawls defined the basic liberties as “specified by institutional rights and duties that entitle citizens to do various things, if they wish, and that forbid others to interfere” (Rawls 1993, 325). The fact that Rawls chose to include “if they wish” here clearly demonstrates that what counts for Rawls in ascribing basic liberties to people is the presence of these protected opportunities, not their exercise. In this spirit, Rawls also spoke of the basic liberties as “a

¹⁶ For a more contemporary discussion of the distinction, see Bader 2018A and Barnett 2014, chapter 1.

framework of legally protected paths and opportunities” (Rawls 1993, 325). This, of course, does not mean that he thought that the exercise of the basic liberties is unimportant. In fact, Rawls seemed to suggest that the political liberties are instrumental for the preservation of the civic basic liberties (Rawls 1993, 299).¹⁷ Thus, certainly political liberties ought to be exercised by people. However, this does not mean that the exercise of the basic liberties is what renders people free.

In summation, Rawls’s conception of freedom is moralized, and in it the notion of the basic liberties takes center stage. The basic liberties are defined in terms of certain fundamental rights. In this sense, one can also call Rawls’s conception of freedom a rights-based one.

2.2 Deriving the Basic Liberties from Justice

In this section, I will show how Rawls derives the rights prescribed by the first principle from his idea of a just society as a fair system in which free and equal citizens cooperate. Hence, Rawls put forward a justice-based conception of freedom.

What is the basis for the moral justification of the liberties in question? The basis for the moral justification of the basic liberties is Rawls’s notion of a just society coupled with his idea of citizens as being fully cooperating members of society by virtue of them having the two moral powers. To Rawls, then, the basic liberties are those liberties which are essential “for the adequate development and full exercise of the two powers of moral personality over a complete life” (Rawls 1993, 293).¹⁸ The first power is the capacity for a sense of justice, i.e. “the capacity to understand, to apply, and to act from (and not merely in

¹⁷ For a discussion on that point, see Gutmann 2003.

¹⁸ Note that Rawls allows for two ways of drawing up a list of basic liberties. One is analytical which is the method outlined here; another one is a survey of the basic liberties historically present in democracies. See Rawls 1982, 6-7; 2001, 45.

accordance with) the principles of political justice that specify the fair terms of social cooperation” (Rawls 2001, 18-19); and the second is the capacity for a conception of the good, i.e. “the capacity to have, to revise, and rationally to pursue a conception of the good” (Rawls 2001,19). According to Rawls, citizens need to have these two moral powers to a “minimum degree to be fully cooperating members of society” (Rawls 1993, 19). The fact that citizens recognize in each other the possession of “the requisite degree” of the two moral powers constitutes “the basis of equal citizenship” (Rawls 1993, 303).¹⁹ Hence, according to Rawls, citizens are seen as having “higher-order interests” in developing and exercising these powers (Rawls 1993, 74).

Expressed differently, in a just society, citizens need to be fully cooperating members of said society who recognize one another as such. For this to be possible, as Jon Mandle notes, “citizens must have the two moral powers above a certain minimal threshold” (Mandle 2015, 296). The basic liberties establish the conditions in which the two powers can be developed and exercised (Rawls 1993, 293). Therefore, the basic liberties are justified by their establishing the conditions necessary for the development and exercise of the two moral powers (Taylor 2011, 135). In consequence, the basic liberties receive their moral justification through being an essential condition for the possibility of a just society.

Moreover, according to Rawls, “a liberty is more or less significant depending on whether it is more or less essentially involved in, or is a more or less necessary institutional means to protect, the full and informed and effective exercise of the moral powers in one (or both) of the two fundamental cases” (Rawls 1993, 335). The first fundamental case “concerns the application of the principles of justice to the basic structure and its social policies” (Rawls 2001, 112), and the second fundamental case “concerns the exercise of citizens’ powers of practical reason in forming, revising, and rationally pursuing [...] a

¹⁹ On the point of the basic liberties being crucial for the status of free and equal citizenship, see also Pettit 2008.

conception over a complete life” (Rawls 2001, 113). Hence, the more a liberty is able to contribute to the conditions for the protection and exercise of the two moral powers in these two cases, the more essential it is for citizens to have them. The most essential liberties are the basic liberties.

Now, Rawls has been criticized for individuating the basic liberties in the way he did. For one thing, Rawls never completely fleshed out his account of the basic liberties. Moreover, Jason Brennan argues that we should abandon the so-called “Moral Power Test” for the individuation of the basic liberties, for “[o]nly a small amount of liberty – not enough to qualify a society as liberal” passes the test (Brennan 2020, 1); and Robert S. Taylor has argued that the political liberties need to be given priority over other basic liberties in order for the Rawlsian story about the priority of liberty to add up (Taylor 2011, in particular chapter 3). However, what is important for my purposes here is not whether Rawls’s story about freedom has no loose ends. Rather, what counts is the way in which Rawls went about defining freedom, and how he situated freedom in the context of his conception of justice.

To this effect, Rawls’s approach to the definition of freedom suggests that we ought to define freedom in accordance with what is the central task of a theory of justice. This task is to specify the principles under which a fair system of social cooperation is possible. What we are free to do under Rawls’s approach thus needs to be in keeping with what is just. Consequently, one could not arrive at Rawls’s specification of what freedom is without knowing Rawls’s understanding of justice. Therefore, in Rawls one of Cohen’s central features of justice-based conceptions is fulfilled, namely that “we do not know what liberty is until we have a freedom-independent characterization of justice” (Cohen 1995, 62). Indeed, in Rawls the basic liberties people have are derived from a particular understanding of what justice requires, namely that society be a fair system of social cooperation. In that sense, Rawls employs what Carter calls a “justice-based definition” of freedom (Carter 1999, 69), for freedom is not defined independently of justice.

In summation, Rawls's definition of freedom is justice-based. This is the case since what is permissible and what is impermissible for people to do is derived from his definition of justice.

2.3 The Basic Liberties and their Fair Value

At this stage, to get a better understanding of the definition of freedom employed by Rawls, it is helpful to point out that Rawls distinguished between the basic liberties and what he calls "the worth of these liberties" (Rawls 2001, 149). In making this distinction, Rawls acknowledged the fact that having, for example, the right to stand for public office does not imply that one is materially in a position to actually exercise this right. To Rawls, then, justice requires that people are put in a position to exercise effectively the rights that the first principle prescribes. In this section, I will outline the argument.

Rawls argues that the basic liberties "are the same for all citizens (are specified in the same way) and the question of how to compensate for a lesser liberty does not arise" (Rawls 2001, 149). In fact, according to Rawls, one citizen cannot have more of, say, freedom of speech than other citizens. This is because, as we have seen, the basic liberties are understood as rights (i.e. vested liberties), and it does not make sense from a liberal-democratic perspective that one citizen has "more" of the right to speak his mind freely than another. Instead, everyone has an equal entitlement to the liberal-democratic rights prescribed by the first principle of justice. However, Rawls acknowledges that what he calls the "worth of these liberties", i.e. "the usefulness of these liberties [...] is not the same for all" (Rawls 2001, 149).

In making this distinction, Rawls acknowledged that it is clearly possible for me to have the legal right to speak my mind freely, while not being in a position to make effective use of that right because, for example, my struggle to make ends meet consumes my entire

life. In fact, Rawls thought that a recognition of that possibility was important enough so as to include the provision of the fair value into the formulation of the first principle of justice. To this effect, in *Political Liberalism* (1993), Rawls gives the following formulation of the first principle: “Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; *and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value*” (Rawls 1993, 5; my emphasis).²⁰

Thus, conceptually, to Rawls “the inability to take advantage of one’s rights and opportunities as a result of poverty and ignorance, and a lack of means generally” is not to be “counted among the constraints definitive of liberty” (Rawls 1999, 179). Instead, according to Rawls, these things are regarded “as affecting the worth of liberty, the value to individuals of the rights that the first principle defines” (Rawls 1999, 179).²¹ Liberty in Rawls has what we may call a “formal” definition in that being free to do *x* does not mean that one actually has the physical opportunity, or what is sometimes called the “effective freedom” to do *x*. Adam Swift, in explaining the distinction argues that on a formal definition of freedom, all British citizens have the freedom to go on holiday to the Bahamas, “in the narrow legalistic sense that nobody is actually preventing them from doing so” (Swift 2014, 103). However, not all “have the effective freedom” to do so. For, “[t]hose citizens living in poverty, with barely enough money to get through the week, are obviously not free [in an effective sense] to go on such a holiday” (Swift 2014, 103; my insertion).

Crucially, however, the fact that Rawls employed a formal definition of freedom does not mean that he regarded it an unimportant matter whether people are in the position to make use of their basic liberties.²² Indeed, *justice as fairness* is deeply concerned with people actually being able to exercise their formal freedoms, in particular when it comes to the

²⁰ Note that only the political liberties are to be guaranteed their fair value.

²¹ On this point, see also Carter 1999, 81-82.

²² This point will be discussed at some length in Chapter II and will reappear in Chapter IV.

political liberties.²³ In this context, Rawls argues that the constitution must ensure that citizens “similarly endowed and motivated should have roughly the same chance of attaining positions of political authority irrespective of their economic and social class” (Rawls 1999, 197). Rawls’s worry is that the political liberties “lose much of their value whenever those who have greater private means are permitted to use their advantages to control the course of public debate. For eventually these inequalities will enable those better situated to exercise a larger influence over the development of legislation” (Rawls 1999, 198). Thus, as Edmundson correctly notes, “[b]eing in a condition of merely formal political equality – under a rule of universal adult suffrage, say – is consistent with possessing very little or no effective political influence while others enjoy more” (Edmundson 2020, 502). Thus, Edmundson follows, “it would be irrational to accept less than an equal influence and so it would be unreasonable to propose that others accept less” (Edmundson 2020, 502).

To remedy this problem, Rawls suggests that a “variety of devices can be used” (Rawls 1999, 198). For instance, “in a society allowing private ownership of the means of production, property and wealth must be kept widely distributed and government monies provided on a regular basis to encourage free public discussion” (Rawls 1999, 198). Moreover, to Rawls the state is supposed to ensure that party politics do not get hijacked by private economic interests. Rawls, in fact, demands that “political parties are to be made independent from private economic interests by allotting them sufficient tax revenues to play their part in the constitutional scheme” (Rawls 1999, 198). Thus, Rawls argues that society should bear the costs of party organization. According to Rawls, if the society did not take this up as one of its central tasks in securing the fair value of the political liberty “and party funds need to be solicited from the more advantaged social and economic interests, [then] the pleadings of these groups are bound to receive excessive attention” (Rawls 1999, 198;

²³ Note, however, that the second principle would render many more formal freedoms effective.

my insertion). Moreover, naturally the second principle of justice is relevant in this context as it prescribes fair equality of opportunity and includes the difference principle requiring that socio-economic inequalities are to be to the advantage of the worst-off (Rawls 2001, 42-43).

Therefore, discussing the fair value of the political liberties, Rawls sought to establish that while we can expect only a small fraction of people to be politically active, the crucial point is that “this fraction, whatever its size, will most likely be drawn more or less equally from all sectors of society” (Rawls 1999, 200). According to Rawls, then, in order to achieve that aim “the constitution should establish equal rights to engage in public affairs and that measures be taken to maintain the fair value of these liberties” (Rawls 1999, 200).

In summation, although having the basic liberties does not imply that one has the means to exercise them, Rawls’s conception of justice includes provisions to ensure that people are in a position to make effective use of their basic liberties.

2.4 Rawls’s Argument Against Freedom as Such

In this section, I will show that Rawls did not believe in what Carter calls the “independent value” of freedom, i.e. the value associated with freedom as such, and I will argue that HLA Hart prompted Rawls to make this stance explicit.

At this juncture, I shall highlight that the story about the relationship between freedom and justice in Rawls had developed over time. One of the central steps in constructing a justice-based conception of freedom was Rawls’s rejection of the notion that we should assign priority to freedom as such, i.e. freedom in a general sense. Rawls made the following point:

“No priority is assigned to liberty as such, as if the exercise of something called ‘liberty’ has a preeminent value and is the main if not the sole end of political and social justice” (Rawls 1993, 291-292).

And:

“Throughout the history of democratic thought the focus has been on achieving certain specific liberties and constitutional guarantees, as found, for example, in various bills of rights and declarations of the rights of man. The account of the basic liberties follows this tradition” (Rawls 1982, 6).

Rawls was prompted by HLA Hart to make explicit this commitment to the basic liberties as opposed to freedom as such. Hart in “Rawls on Liberty and Its Priority” (1973) had raised concerns regarding the account of the relationship between freedom and justice found in the first edition of *A Theory of Justice* (1971), in particular with respect to the notion that “justice requires that liberty may only be limited for the sake of liberty and not for the sake of other social and economic advantages” (Hart 1973, 534). Hart’s commentary was motivated by Rawls’s different ways of referring to liberty. At times indeed in the 1971 edition, according to Hart, Rawls spoke of everyone having an equal right to the “most extensive *liberty*”, which couches liberty “in quite general terms”, while at other times Rawls referred “only to specific basic *liberties*” as having priority (Hart 1973, 539).

This observation of Hart is understandable as Rawls states in the original edition of *A Theory of Justice* (1971) that “[t]he first principle simply requires that certain sorts of rules, those defining basic liberties, apply to everyone equally and that they allow the most extensive liberty compatible with a like liberty for all” (Rawls 1971, 64). This would suggest that the goal of the first principle is to stipulate those rules (i.e. basic liberties) which establish a system where liberty is maximized for everyone. Thus, it appears that the end-goal of the first principle is something like equal maximal freedom, where freedom is

understood as freedom as such and the basic liberties as rules with the aim of achieving equal maximal freedom as such.

At a different juncture in the original edition, however, Rawls argued that his special conception of justice (i.e. *justice as fairness*), “by putting the two principles in serial order [...], forbids exchanges between basic liberties and economic and social benefits” (Rawls 1971, 151). Thus, here the kind of liberty referred to by the first principle seems to be not liberty in a general sense (i.e. freedom as such), but solely the basic liberties. It appears, then, that what is to have priority in *justice as fairness*, i.e. must not be traded off for other benefits, is certain basic liberties and not liberty as such. Moreover, along those lines, in talking about the first principle as being the primary concern of the constitutional convention, Rawls argued in the original edition that “[i]ts main requirements are that the fundamental liberties of the person and liberty of conscience and freedom of thought be protected and that the political process as a whole be a just procedure” (Rawls 1971, 199).

Noting the different ways in which Rawls had spoken of freedom in the original edition, Hart raised doubts as to whether one could indeed give freedom as such priority, as one reading of the first principle of justice seemed to suggest. Indeed, Hart posed the following question to Rawls: “Is the principle of liberty in the book [*A Theory of Justice* (1971)] still this quite general principle, so that under the priority rule now attached to it no form of liberty may be restricted except for the sake of liberty?” (Hart 1973, 539).

If this question were answered in the affirmative, this would entail, as Hart perceptively noted, “that *no form* of liberty may be narrowed or limited for the sake of economic benefits, but only for the sake of liberty itself” (Hart 1973, 540-541). What would be applicable to economic benefits would, of course, be applicable also to any other form of benefit, since Rawls clearly stipulated that liberty ought to be restricted only for the sake of liberty itself (Rawls 1971, 250; 1999, 217; 2001, 111). A principle of that nature would, as Hart pointed out, forbid, for instance, “laws restraining libel or slander, or publications

grossly infringing privacy, or restrictions on the use of private property (e.g., automobiles) designed to protect the environment and general social amenities” (Hart 1973, 548). And as Hart further noted, “[t]hese restrictions on the basic liberties of speech and private property are commonly accepted as trade-offs not of liberty for liberty, but of liberty for protection from harm or loss of amenities or other elements of real utility” (Hart 1973, 548). To Hart’s mind it was indeed implausible that all these kinds of restrictions should be ruled out by Rawls’s first principle of justice.

Put differently, the argument is that if freedom as such has priority in Rawls’s *justice as fairness* and must not be traded off for any other good, then we cannot justify restrictions on freedom which appeal to other goods. However, we commonly assume that we can make such appeals, that indeed such appeals are necessary. For example, often we assume that certain liberties (in Hart’s terms ‘forms’ of liberty) such as the liberty to experiment with bio-weapons ought to be curtailed because, among other things, it poses a great risk to public safety. Now, if it is the case that a liberty can only be restricted if it produces the most extensive liberty overall, then we cannot restrict the liberty to experiment with bio-weapons based on an appeal to safety, but only if it is possible to show that restricting that liberty is somehow of benefit to freedom in a general sense, to the sum total of freedom. For, if we were to make such an appeal to a good other than freedom, we would be justifying a restriction on liberty not for the sake of liberty itself, but for the sake of another good. This manifestly is in violation with the Rawlsian position that liberty can only be restricted for the sake of liberty itself, provided that it refers to freedom as such and not to the basic liberties.

Rawls subsequently responded to Hart’s concerns, agreeing with the thrust of the latter’s argument, explicitly arguing against understanding the priority of liberty as meaning the priority of freedom as such. Rawls wrote: “Hart noted, however, that in *Theory* [*A Theory of Justice* (1971)] I sometimes used arguments and phrases which suggest that the priority

of liberty as such is meant; although, as he saw, this is not the correct interpretation” (Rawls 1993, 292; my insertion). Indeed, as we have seen in the preceding sections, Rawls devoted considerable effort after the publication of the first edition of *A Theory of Justice* (1971) to clarify what conception of liberty he espoused. As I demonstrated, Rawls settled on a justice-based definition of freedom that points to some highly important specific liberties perceived by Rawls to be crucial for the development and exercise of the two moral powers (see in particular Rawls 1982; 1993 chapter 8).

The important take-away from the discussion is that Rawls, in response to Hart, did not believe that defining freedom in terms of freedom as such could do much work in his conception of justice. Thus, there is no subsequent effort to develop an account of freedom understood as an ideal independent of justice. Indeed, neither did Rawls think about freedom in terms of freedom as such, nor did he aim to develop an account of why freedom as such is valuable. The reasons which Rawls had for this appear to be twofold.

Firstly, Rawls seemed to have accepted the gist of Hart’s criticisms, i.e. that if the first principle was based on a conception of freedom as such, then we shall have to interpret the priority rule in a way that would make it impossible to ever trade-off freedom for interests or goods that are not freedom. The problem with this is that this clause would apply also in cases where the freedom in question is undesirable, such as in the case of the freedom to dump one’s rubbish into the nearby forest or set on fire the local town hall, freedoms which we usually would say ought to be restricted for freedom-independent reasons. Given that Rawls argues that liberty can only be restricted for the sake of liberty, if freedom as such was meant, restrictions placed on these undesirable freedoms could only ever be justified if the total amount of freedom as such after application of these restrictions winds up being

greater than without these restrictions in place. Thus, the priority rule would require that we maximize freedom as such, which leads to undesirable outcomes.²⁴

Secondly, in Rawls “the scheme of basic liberties is not drawn up so as to maximize anything” (Rawls 1982, 47). Recall, the overall goal of the two principles of justice is to enable social cooperation for everyone’s benefit. In order for that to be possible Rawls believed people would need to possess the two moral powers. However, to Rawls’s mind, guaranteeing to all citizens the conditions for the development and exercise of the two moral powers is not an enterprise that requires maximization of freedom. Indeed, according to Rawls, the first principle exists “to guarantee equally for all citizens the social conditions essential for the *adequate development* and the full and informed exercise of these powers” (Rawls 1982, 47; my emphasis). Consequently, if the first principle does not require maximization of freedom as such and only the basic liberties (and their fair value) need to be guaranteed to people, then, from Rawls’s point of view, there appears to be no reason to devote time to developing an account of what freedom as such is and why it could be valuable.

In summation, in section 2, I demonstrated that Rawls put forward a justice-based conception of freedom in terms of the basic liberties. More specifically, Rawls derives the basic liberties from his definition of justice as a fair system of social cooperation. Moreover, Rawls in response to Hart chose to deny explicitly the importance of freedom as such for his project. Thus, in Rawls there is no effort to develop an account of what Carter would call freedom as an independent ideal. Hence, in Rawls the relationship between freedom and justice is characterized by the former being defined in terms of the latter.

²⁴ Interestingly, to the best of my knowledge, Rawls never considered changing the priority rule. It is the combination of freedom as such with the priority rule that creates the difficulties pointed out by Hart. Thus, in principle Rawls could have opted to change the priority rule to avoid some of the challenges Hart had put to him.

Before we move on, let us pause to address an important concern²⁵ namely that while the basic liberties are central to the Rawlsian project, Rawls appears to speak of freedom in more than one sense that can be deemed relevant for fully understanding Rawls's view on the relationship between freedom and justice. For instance, we have seen that the basic liberties are paramount for people to view themselves and each other as free and equal citizens and for citizens to be able to develop and exercise their two moral powers. However, is there not another kind of freedom associated with, for example, people choosing their own conception of the good? Shall we, then, say that the negative freedom guaranteed by the basic liberties is a precondition for citizens to exercise their positive freedom of choosing their own conceptions of the good? If this is so, to understand fully what "free and equal citizenship" (Rawls 2001, 40) implies in terms of conceptions of freedom, we might need to speak also of a positive conception of freedom. Similarly, as we have seen Rawls criticized the notion of freedom as such, which is a notion that I argued is non-moralized. Does that not imply that he had a non-moralized conception of freedom as such? Hence, by arguing that Rawls's conception of freedom is moralized (i.e. justice-based) am I not missing something important? Likewise, in reducing Rawls's supposedly moralized conception of freedom to the basic liberties, am I not merely demonstrating that Rawls's notion of the basic liberties is moralized but not that his conception of freedom is moralized?

Firstly, I am not claiming that Rawls's position can be reconstructed only using one conception of freedom. Rawls's work is vast, and, as already acknowledged, Rawls's own views on freedom had evolved over time. So, it can certainly be worthwhile to reconstruct Rawls's position through the lens of more than one conception of freedom. In fact, my discussion of the relationship between freedom and justice does not rule out further analysis that includes more than one conception of freedom. Yet, in my dissertation I am chiefly

²⁵ These important concerns were put to me by Alexa Zellentin and Ralf Bader.

concerned with the view of the relationship between freedom and justice as suggested by Rawls's principles of justice. Given Rawls's proclamation that the first objective of justice as fairness was to develop a "convincing account of basic rights and liberties, and of their priority" (Rawls 1999, xii), this strategy seems reasonable. This also entails that when I speak of Rawls as having put forward a justice-based (or moralized) conception of freedom, I mean, first and foremost, a justice-based conception of the basic liberties.²⁶

Secondly, my aim is to stay, where possible, close to Rawls's own phraseology, and Rawls himself argued at multiple junctures that he had one definition of liberty and that it was centered around the basic liberties. In *A Theory of Justice. Revised Edition* (1999), he argued that "[l]iberty, as I have said, is a complex of rights and duties defined by institutions" (Rawls 1999, 210). Moreover, when Rawls was pushed on the meaning of liberty by Hart, he answered by pointing towards the basic liberties and did not develop an account of the relationship between freedom and justice that explicitly distinguishes between different conceptions of freedom (Rawls 1982, 1993 Chapter 7, 1999 xii-xiii). Thus, when Rawls saw himself prompted to give a definition of freedom, it appears that he put forward the definition that he himself endorsed for the purpose of constructing *justice as fairness* without claiming that there is no use for other conceptions of freedom in political theorizing.

All in all, while it certainly can be illuminating to expand my analysis beyond its focus on the basic liberties, I maintain that we should start by understanding the conception of liberty implied by them.

²⁶ Despite that, in Chapter IV, I will demonstrate how Rawls's justice-based conception of the basic liberties can be expanded to yield a justice-based conception of liberty more generally, and I will argue that it is a natural way to extend Rawls's conception of freedom (as suggested by the first principle of justice).

3. Ian Carter's Challenge to John Rawls

In section 3, expanding upon my remarks in the introduction, I will do two things. Firstly, I will outline the central steps in Carter's argument for a freedom-based theory of justice. The idea of a freedom-based theory of justice I regard as a counterproposal to the way Rawls thought about the relationship between freedom and justice. Secondly, I will explain how a freedom-based theory of justice would be different to Rawls's (non-freedom-based) theory of justice. In so doing, I will highlight the more concrete theoretical upshots of espousing a freedom-based theory of justice.

3.1 The Steps Toward a Freedom-Based Theory of Justice

In this section, I will outline what I understand to be the challenge which Carter's work poses to the way Rawls defined the relationship between freedom and justice. In doing so, I will expand upon my remarks in the introduction to highlight key-steps in Carter's argument.

The way in which Rawls interpreted the relationship between freedom and justice has not remained without criticism. As I have already mentioned before, there are people who have proposed changes, for instance, to the way Rawls went about individuating the basic liberties arguing that the Two Moral Powers Test does not quite work (Brennan 2020). Others such as Jürgen Habermas have criticized Rawls for "generat[ing] a priority of liberal rights which demotes the democratic process to an inferior status" (Habermas 1995, 128); and Robert S. Taylor makes the point that in order to uphold the Rawlsian framework of *justice as fairness*, the priority of the political liberties over the civic ones should be established (Taylor 2011). In my opinion, however, one of the more far-reaching challenges to the Rawlsian approach is posed by Ian Carter's work. I believe this to be the case because Carter urges us to rethink completely the way in which we should conceive of the relationship of freedom and justice.

More specifically, in his seminal book *A Measure of Freedom* (1999), Carter has argued that freedom as such, or as he calls it “overall freedom”, should be one of the *distribuenda* of a theory of justice, and that freedom should be defined independently of justice. In this sense, to Carter, a theory of justice should be “freedom-based” (Carter 1999, 68-69). In line with this view, Carter asserts that we should reject what he calls justice-based definitions of freedom, i.e. definitions of freedom which are based on a particular understanding of justice. Instead, he wants us to conceive of freedom as an ideal independent of justice, so that justice can be based on freedom, not *vice versa*. According to Carter, freedom should be defined as freedom as such understood as a quantitative attribute, i.e. as some sort of physical commodity. To Carter, people can have more or less freedom as such, and people having more or less of it should be one of the central issues a liberal theory of justice should be concerned with (Carter 1999, 11-12).²⁷

It is worth mentioning, however, that Carter does not only have John Rawls in mind when he criticizes the view according to which we do not really need to be concerned with freedom as such. In fact, in criticizing justice-based conceptions of freedom, Carter devotes most of his attention to the works of Ronald Dworkin, Robert Nozick, and William Kymlicka (see Carter 1995; 1999, 68-74; 2011; 2015).

William Kymlicka, for instance, believes that freedom as such is not a normatively fruitful notion. He argues that the “idea of freedom as such, and lesser or greater amounts of it, does no work in political argument” (Kymlicka 2001, 153). What we should ask instead, according to Kymlicka, is “which specific liberties are most valuable to people, given their essential interests, and which distribution of those liberties is legitimate, given the demands of equality or mutual advantage” (Kymlicka 2001, 153). Similarly, Ronald Dworkin in *Taking Rights Seriously* (1977), argued that “[i]t is very difficult to think of liberty as a

²⁷ The nuts and bolts of Carter’s argument for understanding freedom as overall freedom will be explicated in Chapter III. In this section, I will describe in more general terms what Carter’s challenge to Rawls’s understanding of the relationship between freedom and justice is.

commodity” (Dworkin 1977, 270). For Dworkin, the value of liberty is tied to the liberty-independent interests it furthers. Thus, to Dworkin, there is no value that freedom has as such. Consequently, Dworkin believed it makes sense to think of freedom exclusively in terms of certain specific liberties which we deem important because of the things they allow us to do. For Dworkin, this stance justifies a right to certain basic liberties but not a right to freedom as such:

“If we have a right to basic liberties not because they are cases in which the commodity of liberty is somehow especially at stake, but because an assault on basic liberties injures us or demeans us in some way that goes beyond its impact on liberty, then what we have a right to is not liberty at all, but to the values or interests or standing that this particular constraint defeats” (Dworkin 1977, 271).

Carter, then, correctly follows that Rawls thought about the matter of freedom as such in a similar way to Dworkin and Kymlicka. Carter argues that the same idea of the normative insignificance of freedom as such “appears also to be present in the work of the later Rawls” (Carter 1999, 20).²⁸ Carter rightfully observes that Rawls, while initially putting forward “arguments in favour of ‘the most extensive liberty’ and the rule that ‘liberty can be restricted only for the sake of liberty’, [...] has since claimed only to have been interested in defending a list of specific liberties – those which he has all along called the ‘basic’ liberties” (Carter 1999, 20). In line with Carter’s judgment, throughout this chapter we have established that Rawls did not bestow priority on liberty as such (Rawls 2001, 44-45).

Against this point of view, which Carter terms “the *specific-freedom thesis*”, i.e. that our normative interest does not lie in freedom as such but only in certain specific freedoms, Carter puts forth the “*overall-freedom thesis*”. The *overall-freedom thesis* argues that

²⁸ See also Carter 1995, 823.

“people have a right to (or at least a fundamental interest in having) *a measure of freedom* [as such]” (Carter 1999, 11). In other words, *pace* the aforementioned thinkers, Carter argues that freedom as such is an ideal that is indeed relevant for a liberal theory of justice. The way he constructs this argument is in three steps.

The first step is a conceptual one, through which Carter tries to convince us that it indeed makes sense to speak of freedom as such, or as he calls it “overall freedom”. In order to make this point, Carter argues that there is such a thing called freedom as such which he understands as the “amount of freedom one has in either absolute or relative terms, and represents some kind of an aggregation over one’s specific freedoms” (Carter 1999, 11). Thus, Carter believes that this conception of freedom enables us to make sense of the question as to how much freedom as such people have.²⁹ The important point is that contrary to Ronald Dworkin, who had argued that “we do not have a concept of liberty that is quantifiable” (Dworkin 1985, 189), Carter maintains that we are in fact capable of constructing a conception of freedom which allows for quantification, enabling us to speak meaningfully about varying degrees of freedom.

The second step is an axiological one arguing that we do in fact have a fundamental interest in freedom as such because freedom as such has value. As argued in the introduction, this is the so-called independent value of freedom, which, according to Carter, is the value freedom has “independently of the value we attach to the particular things it leaves us free to do” (Carter 1995, 825). This is a crucial step since just because there is a thing called freedom as such, does not mean that this fact should matter to us. Rawls, for instance, did not make the conceptual claim that freedom as such is an unintelligible notion, in the sense that the term “freedom as such” has no referent. Instead, Rawls thought that freedom as such is not of great importance, even though it is true that we can meaningfully speak about

²⁹ How exactly this works will be unpacked in Chapter III.

freedom as such. Rawls's clarificatory remarks on the first principle were aimed at denying normative importance to freedom as such, not at claiming that the notion of freedom as such is unintelligible (Rawls 1982, 1993, chapter 7).³⁰

Against this view, Carter puts forth the notion that freedom as such has what he calls non-specific value (i.e. independent value). This is a particular form of value which is attached only to freedom as such. To say, according to Carter, "that freedom is non-specifically valuable is to express a preference for the presence of options *tout court* (while not of course denying that some options are also preferable to others for *specific* reasons)" (Carter 1999, 128). Carter believes that this form of value is causally connected with societal progress, individual well-being and constitutively related to agency, autonomy, as well as people's self-respect (see in particular Carter 1995 and 1999, chapter 2). His aim is, therefore, to establish that freedom "is *itself* one of the valuable things in life" (Carter 1999, 290).³¹

In a third step Carter makes the methodological claim that a theory of justice is supposed to be "freedom-based". Building in particular on the work of Gerald Cohen (1988, 1995, 2011), Carter argues that under a justice-based conception of freedom, "freedom loses its status as one of the fundamental moral values grounding a liberal theory of justice" (Carter 2011, 491). In fact, to Carter theorists that employ justice-based definitions of freedom "get freedom and justice the wrong way round" (Carter 1999, 69). The charge which Carter levels is that "rather than first discussing how far freedom should be seen as a valuable thing and then discussing the justice of various possible distributions of that valuable thing,

³⁰ In particular, when Rawls responded to Hart, he did not argue that the notion of freedom of such is spurious. Instead, he claimed that it could not function as a component of his liberal theory of justice (Rawls 1982, 1993 chapter 8).

³¹ Again, this will be unpacked in detail in Chapter III.

they instead discuss the nature of justice without reference to freedom, and then go on to define freedom in terms of their favoured conceptions of justice” (Carter 1999, 69).³²

For Carter, a freedom-based theory of justice holds that freedom as such is a good that should be distributed among people. According to Carter, the view is that “freedom itself ought to be one of the *distribuenda* of our theory of distributive justice” (Carter 1999, 68). If this is to be the case, however, Carter believes it crucial for us to have an independent account of what freedom is and why it is valuable. Hence, obviously the third step in Carter’s argument is dependent on the former two. In other words, Carter claims that within a liberal conception of justice, there should be conceptual space made for the notion of overall freedom and the non-specific value of freedom. Carter explains:

“This is because, quite simply, justice is about the distribution of benefits and burdens in society, and if we assume freedom to be non-specifically valuable, then we assume freedom as such to be one of the benefits to be distributed. The ideal of freedom need not of course be the *only* object of a freedom-based theory of justice. Such a theory must, however, be based on that ideal among others” (Carter 1999, 69).

All in all, we have seen that Carter’s argument proceeds by way of three steps. The first is that we can indeed speak meaningfully of having freedom as such. The second is to argue for freedom as such being valuable. The third is that freedom as such should be part of a liberal theory of justice.

³² To be precise, in the chapter in which Carter develops his criticism of justice-based definitions of freedom the principal targets are Nozick and Dworkin, however as we have seen also Rawls used a justice-based definition of freedom.

3.2 Moving Toward a Freedom-Based Theory of Justice

Now that we understand the steps in Carter's argument, in this section, I will provide an initial outline of how a freedom-based theory of justice would be different to Rawls's conception of justice.

Firstly, there would be some sort of a principle for the distribution of overall freedom. The choice of the principle, according to Carter, "will depend, among other things, on the *reasons* we have given for saying that freedom is non-specifically valuable, and – what is in part the same thing – on the *kind* of non-specific value we have attributed to freedom" (Carter 1999, 74). Recall how I said in the introduction that Carter argues that the independent value of freedom can take different forms. To Carter, among the possible principles are maximal societal freedom, equal freedom, maximal equal freedom, maximin freedom, leximin freedom, and a guaranteed minimum of freedom (Carter 1999, 87).

It is important to note, though, that Carter argues that Rawls implies a principle for the distribution of overall freedom. The difference principle, according to Carter, is a principle for the distribution of overall freedom, albeit not nominally so. To Carter, then, "to all intents and purposes one of Rawls's principles of justice is that of maximin freedom" (Carter 1999, 82). In this spirit, Carter criticizes Rawls for drawing the distinction between liberty and the worth of liberty. Carter argues that what Rawls calls "the worth of liberty" is exactly what many would call 'liberty', while what Rawls calls 'basic liberties' is what might be more felicitously termed 'formal rights' or, in Rawls's own words, 'constitutional safeguards'" (Carter 1999, 82). This conclusion has to do with the way Carter defines freedom as the physical opportunity to do things. Clearly, someone's formal right to speak one's mind freely is conceptually separate from the physical opportunity to speak one's mind freely. One can have the former without having the latter, and vice versa.³³ Thus, a freedom-

³³ As we have seen, this is a fact that Rawls realized. The very reason why Rawls insisted upon the distinction between the basic liberties and the worth of those liberties was to acknowledge that fact.

based theory of justice would entail a nominal change to the effect that the basic liberties would be called not liberties but “rights” but it would also involve a directly freedom-based argument for the distribution of social and economic inequalities.

Secondly, the way rights are justified would be different. At different junctures of his work, Carter provides as one of the reasons for understanding freedom independently of justice, his wanting us “to be able to defend a particular set of rights on the ground that it is good for freedom” (Carter 2021, 137). Indeed, Carter wants us to be in a position to ascertain what a given set of rights “implies in terms of freedom” (Carter 2021, 137). For this to be possible, Carter claims that we cannot define freedom in terms of rights. For, if one defines freedom “in terms of rights, we can no longer appeal to freedom as one of our reasons for favouring a certain structure of rights” (Carter 2011, 491). In other words, if freedom is defined in terms of the possession of rights, we cannot use freedom as an independent standard for the evaluation of a set (or structure) of rights, since our conception of rights will already be part of our definition of freedom. Thus, Carter wants us to adopt a morally neutral conception of freedom which enables us to consider freedom “an independent value the promotion or preservation of which can supply a reason for supporting a particular structure of rights” (Carter 2011, 491).

Thirdly, – and this is an upshot of what has been said so far – a freedom-based theory of justice will place considerable importance on appealing to degrees of overall freedom in justifying what is due to people. The reason for this is that if freedom as such has value and it is better to have more rather than less of it, we want to have more rather than less freedom as such. Thus, a freedom-based theory will use measurements of overall freedom as an important normative guide for establishing what justice requires. From this perspective, when we argue for one set of rights rather than another or for one distributive mechanism instead of a rival one, we should want to appeal among other things to the fact that one of

them leaves us better off in terms of overall freedom than the alternatives. Thus, to Carter “justice places demands on our powers of *measuring* freedom” (Carter 1999, 4).

In summation, a freedom-based theory of justice would differ from the Rawlsian proposal in at least the three ways outlined here. In a freedom-based theory of justice, there would be a principle explicitly stating that it pertains to the distribution of overall freedom; the rights would be justified differently; and generally, measurements of overall freedom would function as an important normative guide for determining what justice requires.

4. Filling the Gap

This section will explain what gap this research is filling and why it is important to do so. It will also provide a brief overview of the coming chapters.

In the light of what was outlined in section 3, this work aims at answering the not-yet posed question as to whether Carter’s challenge to Rawls can be deemed successful. In other words, should we take Carter’s position on the relationship between freedom and justice as opposed to the Rawlsian version? I hold this to be a crucial question because as Rawls put it, constructing a “convincing account of basic rights and liberties, and of their priority, was the first objective of justice as fairness” (Rawls 1999, xii).³⁴ Thus, to Rawls, conceptualizing the relationship between freedom and justice in a convincing manner is the most important aim of *justice as fairness*. If there is a problem in the way Rawls came to understand that relationship, this puts into jeopardy the entire Rawlsian project.

It is particularly interesting to look at Carter’s work, as opposed to, say, Robert Nozick’s, because Carter is generally on board with the Rawlsian idea that justice is about the assignment of rights and duties as well as the distribution of benefits and burdens in

³⁴ The second objective was of course to “integrate that account with an understanding of democratic equality, which led to the principle of fair equality of opportunity and the difference principle” (Rawls 1999, xii).

society (Carter 1999, 69; Rawls 1999, 4). Moreover, contrary to Robert Nozick (1974), Carter is on board with liberal egalitarianism. Thus, we do not have to deal with deep ideological cleavages that confuse matters. The challenge which Carter's work poses to Rawls, I hold, can be regarded as not emerging from a general disagreement as to what justice is. Instead, the challenge which Carter's work poses to Rawls is about the status of freedom within the project of constructing a liberal theory of justice. More specifically, Carter wants us to move towards a freedom-based theory of justice by letting the concept of freedom (defined independently of justice) do fundamental justificatory work within it.

There are sundry aspects to the challenge that Carter's work poses to Rawls, the general thrust of which I outlined in the last section. In this dissertation, however, I will focus primarily on what I think are the two central themes that tie Carter's challenge together. The first is Carter's rejection of justice-based definitions of freedom. Since, as I demonstrated, Rawls developed a justice-based definition of freedom, this is a fundamental challenge to the way Rawls thought about the relationship between freedom and justice. Thus, I will answer the question as to whether we should indeed reject justice-based conceptions of freedom. The second is the idea of a freedom-based theory of justice. This is the notion of letting freedom do some fundamental work in defining what justice requires. I will focus in particular on Carter's proposal that "we ought to be able to defend a particular set of rights on the ground that it is good for freedom" (Carter 2021, 137). This notion suggests that Carter wants us to conceive in a fundamentally different manner to the way Rawls thought about the justification of rights. I will answer the question as to whether this proposal is reasonable.

In Chapter II, I will deal with Carter's notion that justice-based conceptions of freedom get the relationship between freedom and justice the wrong way round. In Chapter III, I will develop an explication of Carter's conception of freedom (overall freedom) and put forward a functionalist approach to the analysis of conception of freedom. In Chapter

IV, I will deal with Carter's idea that we should employ overall freedom as an evaluative standard for the evaluation of a set of rights. This will be followed by a conclusion in which I summarize my findings and clearly answer the question as to whether the challenge which Carter's work poses to Rawlsianism can be deemed successful.

Conclusion

In this chapter, I established the gap this research seeks to fill and why it is important to do so. I expounded on how Rawls's conception of *justice as fairness* works, and I argued that Rawls employs a justice-based conception of freedom. I showed that Rawls bases his conception of freedom on justice by defining freedom in terms of certain essential basic liberties understood as certain fundamental liberal-democratic rights. In this context, I introduced the important distinction in Rawls between liberty and the worth of liberty. I also demonstrated why Rawls chose to not regard freedom as such as being an important normative concern for justice. Afterwards, I established that Carter's position on the relationship between freedom and justice can be regarded as an important challenge to the Rawlsian project. Moreover, I argued that the challenge has not been yet evaluated. Based on this, I maintained that it is important to answer the question as to whether the challenge which Carter's work poses to Rawls can be regarded as successful.

Chapter II – Carter Against Justice-Based Conceptions of Freedom

Introduction

In this chapter, I will analyze Carter’s claim that justice-based definitions of freedom get freedom and justice the wrong way around as they define freedom in terms of justice. Ultimately, I will argue that there is nothing wrong with defining freedom in terms of justice, for we can make use of both justice-based conceptions and empirical conceptions of freedom. This is the case as long as we see them as belonging to two different stages in normative theorizing fulfilling two different functions.

In arguing for this position, I will explain how justice-based and empirical conceptions of freedom work. I will highlight, building on Matthew Kramer (2003, 2010, 2017), that a justice-based conception relies on deontic categories to specify what a person is free to do. However, given that justice-based conceptions are employed to evaluate empirical situations, they cannot rely on deontic categories alone. I will then argue, building on Ralf Bader (2018A, 2018B), that justice-based conceptions make use of the distinction between liberty and license.

Afterward, I will make the point that Carter, in arguing against justice-based conceptions of freedom, was heavily influenced by Gerald Cohen. Indeed, when arguing for empirical conceptions of freedom instead of justice-based ones, Carter often references Cohen’s work (Carter 1992, 41; 1999, 69-74; 2005, 153-156; 2011, 491; 2021, 137). Cohen put forward a number of criticisms of justice-based conceptions of freedom (Cohen 1988, 1995, 2011). They dealt with issues such as the relationship between freedom and private property, the use of the term “free” in ordinary speech, the specifics of Robert Nozick’s justice-based conception of freedom (Nozick 1974), and the idea of freedom falling out of

the picture in justice-based conceptions of freedom. I will argue that only the last form of criticism promises to get to something important.

Thereafter, I will turn to the way in which Carter builds on Cohen's criticism of justice-based conceptions of freedom. I will consider the notion that justice-based conceptions are in some sense formal while empirical conceptions are substantive. The idea is that formal freedom, understood as the right to do something, does not imply the physical opportunity to perform that thing. Put differently, we can have the right to stand for office without having the means of actually exercising that right. I will argue, however, that this distinction does not carry a lot of weight, in particular, when justice-based conceptions are considered in general, not only through the work of Robert Nozick. Also Carter, in work more recent (2011) than *A Measure of Freedom* (1999), acknowledges how the contrast between formal and substantive conceptions of freedom breaks down in an important way. Indeed, a conception of justice can be specified so as to require some form of egalitarianism. To this I will add another way in which the distinction breaks down, and I will argue that this way can be found in Rawls's conception of *justice as fairness*.

I will then go on to argue, similarly as in my treatment of Cohen, that the most promising critique in Carter is where he provides a criticism based on the independent value of freedom. Constructing such an account, Carter hopes that he would be able to ask the question as to how well a set of rights fares in terms of promoting freedom as such. The idea is that if we define freedom in terms of rights, as justice-based conceptions generally do, we cannot ask how much freedom as such a given set of rights yields. I will argue, however, that while it is certainly an interesting question as to what a given set of rights means in terms of freedom as such, posing this question does not require us to reject justice-based conceptions of freedom. This is the case as long as we are mindful of the fact that justice-based and empirical conceptions can be regarded as belonging to two different stages of normative theorizing.

In section 1, I will explicate the difference between justice-based and empirical conceptions of freedom. In section 2, I will turn to Cohen’s criticism of justice-based conceptions of freedom. In section 3, I will show how Carter builds on Cohen’s criticism of justice-based conceptions. In section 4, I will develop a critical response to Carter’s position.

1. Empirical and Justice-Based Conceptions of Freedom

While justice-based conceptions of freedom are not purely deontic, in this section, I will argue that in them deontic categories of permissibility and impermissibility play a crucial role. Contrariwise, empirical conceptions of freedom do not make use of deontic categories at all.

Justice-based conceptions of freedom rely in an important way on deontic (or “normative”) categories. Recall that with Matthew Kramer we can define these categories as the “categories of permissibility and impermissibility” (Kramer 2003, 60), or we can speak with Ralf Bader of “normative possibility” and “normative impossibility” (Bader 2018B, 62). Employing these categories, with Kramer, we can describe *P* as being *normatively* free to do *x* if with respect to *x* *P* is “in a state of permittedness that is implicitly or explicitly established by authoritative norms such as laws or moral precepts or institutional rules” (Kramer 2003, 61). Contrarily, according to Kramer, “any action which those norms forbid is something which a person is normatively unfree to do” (Kramer 2003, 61). More specifically, according to Kramer, a person is normatively free to do *A* “[i]f none of the authoritative norms imposes on her a duty to abstain from doing *A* or to abstain from doing something that would be indispensable for the doing of *A*” (Kramer 2003, 62).³⁵ Thus,

³⁵ See also Kramer 2017, 199. Being free to do something, then, corresponds to having a Hohfeldian privilege and being unfree to do something corresponds to a Hohfeldian duty to abstain from doing a certain thing.

from this perspective, in order to be free to do a thing one has to have the normative (or deontic) opportunity to do it.

This deontic way of specifying freedom contrasts with the empirical way. The empirical way plays a prominent role in thinkers such as Hillel Steiner (1975, 1994), Ian Carter (1992, 1999), and Matthew Kramer (2003).³⁶³⁷ On the empirical approach, according to Steiner, “a person is unfree to do an action if, and only if, his doing that action is rendered impossible by the action of another person” (Steiner 1994, 8). On this approach, we ascribe freedom based on whether or not it is physically possible for a person to do something, i.e. whether or not someone has the physical opportunity to do something. Hence, the empirical approach specifies the *physical* freedoms people have and relies on the “modal categories of possibility and impossibility” in doing so (Kramer 2003, 60).³⁸

Importantly, as adumbrated in Chapter I, not all conceptions of freedom that use deontic categories must be necessarily justice-based conceptions of freedom. Indeed, when it comes to specifying the normative freedoms a person has at her disposal, we can take the basis for the authoritative norms to be the currently existing legal system. This system may or may not conform to the understanding of justice we espouse. Thus, our understanding of justice may suggest we have certain normative freedoms which our current legal system does not bestow on us. In this spirit, Kramer follows that there can be “different varieties of authoritative normativity” (Kramer 2003, 61). In justice-based conceptions of freedom what is permissible and what is impermissible is specified by reference to what rights (Hohfeldian

³⁶ For a more extensive list of thinkers espousing an empirical conception of freedom, see Dowding & Van Hees 2007, 147.

³⁷ Note that in particular Kramer’s conception of freedom differs from the one of the other two. Kramer has developed a trivalent approach to negative freedom that incorporates abilities (Kramer 2022). However, all of the three thinkers converge on a view of freedom that regards being free to do a particular thing as constituted by physical possibility. Moreover, although Kramer believes that whether or not a person is free to do something is a purely factual matter, he thinks ascertaining people’s degrees of freedom is a partly evaluative endeavor (Kramer 2003, chapter 5; Kramer 2022). It thus may be followed that Kramer employs a fully empirical approach to determine whether a person is free to do a particular thing, but a partially non-empirical approach to determine the extent of a person’s freedom.

³⁸ Note, however, both the deontic and the empirical approach do not imply an exercise conception of freedom. The mere presence of freedoms is what renders a person free (Kramer 2017, 200).

claim-rights and privileges) people have, but these rights are those that justice demands we have.

Moreover, justice-based conceptions of freedom do not only make use of the deontic categories. If a justice-based conception were reducible to the employment of deontic categories, then it could not make reference to empirical facts. Thus, the conception could inform us about what we are normatively free and unfree to do, yet it could not tell us whether we do indeed act in conformity with our normative freedoms. Whether something a person did was in conformity with her normative freedoms necessitates not only a normative description of what is permissible to her but also an empirical one of the way she did in fact act. However, under a justice-based conception of freedom, the empirical description of how people act does not by itself amount to a description of freedom.³⁹

Take the following example. Assume that Mark interferes with Paul by wrestling him to the ground and making it impossible for him to move. Does Mark render Paul unfree under a justice-based conception of freedom? Well, it depends on what the underlying definition of justice stipulates are permissible actions. If Paul is merely going for a run in the park, something that he has the permission to do and it is impermissible for Mark (as established by a duty) to interfere with Paul in the way he does, then Mark renders Paul unfree. Mark's interference is, then, a case of him exercising license and not freedom. It is a case of license, as Bader notes, because Mark's action was an impermissible action and hence "not part of his liberty, but belong[s] to mere license" (Bader 2018A, 143; my insertion). Hence, Mark had a duty to abstain from that action. Thus, from this perspective, as Bader notes, actions one is free to perform "are restricted to permissible opportunities and do not include those actions that are a part of mere license" (Bader 2018B, 65). As Pietro Intropi correctly established, in the domain of license lie those "opportunities to which

³⁹ I am thankful to Ian Carter and Pietro Intropi for pushing me on this point.

ascriptions of freedom and unfreedom do not pertain” (Intropi 2021, 426). Thus, if Mark were to be stopped from interfering impermissibly with Paul, the former would not be rendered unfree but instead “not-free” (Bader 2018A, 153). In that sense, this approach to defining freedom is trivalent. Contrariwise, if Paul runs in the park because he is fleeing from the police who are obliged to detain him in light of Paul’s committing a crime, then Paul is in fact doing something he is not permitted to do; and by running away, Paul is exercising license. Paul is not-free to run away from the police. Moreover, assuming that Mark has the permission to stop Paul, then Mark’s interfering with Paul is consistent with both actors’ freedom. In this case, Mark’s interfering with Paul neither renders Paul unfree nor constitutes an exercise of license.⁴⁰ This is the case because, as Bader notes, “if [an] agent is prevented from doing something that he is not free to do in the first place, owing to his not having a right to do that thing, then the agent’s freedom has not been infringed” (Bader 2018A, 144).⁴¹

The upshot is that justice-based conceptions of freedom need to establish how people act and who is interfering with whom in a factual way. Yet, this description of facts does not amount to a description of freedom. A description of freedom requires normative evaluation by distinguishing justified from unjustified interference (Bader 2018A, 144-146; 2018B, 62-64). Thus, describing a situation empirically is a necessary thing that a justice-based conception of freedom needs to do, but it is not sufficient for making ascriptions of freedom.

Contrariwise, thinkers such as Ian Carter and Hillel Steiner argue that we should rely only on factual descriptions to establish what a person is free to do (and also what they are free to do in a general sense) (see Carter & Steiner 2022).⁴² In consequence, it is possible for

⁴⁰ If Mark had a duty to stop Paul, then, of course, the only permissible course of action would have been for Mark to interfere with Paul.

⁴¹ Note that Bader understands “right” here in terms of a vested liberty (see Bader 2018A, 141 fn. 1). This makes perfect sense and is in line with what we established in Chapter I, namely that being permitted to do something does not imply that someone else is not permitted to interfere (see Simmonds & Neoh 2022, 318 and Hohfeld 1919, 38-39).

⁴² To be precise, empirical conceptions of freedom do make use of concepts such as actor, interference, and action. Yet, the use of these concepts does not presuppose a certain view of justice.

justice-based and empirical conceptions of freedom to return different verdicts for the same empirical situation. This is an upshot of the fact that deontic freedoms and physical freedoms can be characterized by what Kramer calls “extensional non-equivalence”. In simpler terms, “a person will often be deontically free to $[\phi]$ without being physically free to $[\phi]$, and vice versa” (Kramer 2010A, 836; my insertion). Returning to the example of Mark interfering with Paul, if we reduce ascriptions of freedom to empirical matters, then whether Mark was permitted by our preferred conception of justice to interfere with Paul is neither here nor there. Indeed, to Steiner empirical conceptions “presuppose nothing about the significance or permissibility either of that action or of any action preventing it. Nor, for that matter, do they presuppose anything about whether someone believes either of those actions to be significant or permissible” (Steiner 1994, 9).⁴³

Therefore, on an empirical approach, Mark renders Paul unfree by virtue of interfering with him, not by virtue of interfering with him impermissibly. This also implies that once we establish the facts on the ground, the description of freedom provided by empirical conceptions remains the same. This is not the case for justice-based conceptions of freedom. For example, your understanding of what is just might not regard Paul as having committed a crime at all, while mine does. Perhaps, Paul chose to speak out against a tyrannical regime and is now running for his life. Thus, you would say that he is permitted (maybe even duty-bound) to run away to save himself and keep up the resistance. Perhaps I, espousing a strange conception of loyalist justice, believe that Paul committed the crime of seditious speech, and consequently I hold that it is impermissible for Paul to flee from the authorities.

In summation, justice-based and empirical conceptions of freedom do not function in the same way. Justice-based conceptions of freedom rely on deontic categories to spell

⁴³ Steiner calls those conceptions that rely on categories such as permissibility or significance “impure”, while he terms those that do not rely on such categories “pure” (Steiner 1994, 14).

out what people are free to do. However, they cannot rely on deontic categories alone and are in need of providing a factual description of how people interact before they can normatively evaluate a given empirical situation. Indeed, whether we act in accordance with our normative freedoms is a question that necessitates not only an understanding of what normative freedoms we have but also how, as a matter of fact, we interfere with one another. Empirical conceptions of freedom, on the other hand, settle matters of freedom and unfreedom through a factual description only.

2. Gerald Cohen Against Justice-Based Conceptions of Freedom

Now that we have gained an understanding of how justice-based and empirical conceptions of freedom work, we shall turn to their critics. In arguing against justice-based conceptions of freedom, Carter sees himself indebted to Gerald Cohen. This Carter has acknowledged explicitly at multiple junctures in his work (see 1992, 41; 1999, 69-74; 2005, 153-156; 2011, 491; 2021, 137). Cohen, in turn, developed his argument against justice-based conceptions of freedom largely by criticizing Robert Nozick and the latter's particular brand of libertarianism (Cohen 1988, 1995, 2011). In section 2, I will reconstruct Cohen's criticism of justice-based conceptions of freedom, and in section 3, I will show how Carter builds on Cohen.

Cohen made four interconnected points. Firstly, Nozick's conception of freedom gets wrong the relationship between freedom and property. Secondly, justice-based conceptions fail to capture important linguistic intuitions we have about freedom. Thirdly, Nozick oscillates between two different conceptions of freedom. Fourthly, freedom as an independent ideal falls out of the picture under justice-based conceptions of freedom. I will argue that Cohen's criticism is unable to establish a conclusive case against justice-based conceptions of freedom. Nonetheless, Cohen's criticism succeeds in pointing us to a

potential weakness of justice-based conceptions of freedom, namely that under justice-based conceptions of freedom, freedom falls out of the picture. Despite the promising nature of that criticism, Cohen was not able to put forward a detailed account of why it is crucial for us to conceive of freedom as an ideal independent of justice.

2.1 Freedom and Private Property

One of the criticisms which Cohen put forward against Nozick's justice-based conception of freedom is that it gets wrong the relationship between freedom and property. In this section, I will analyze the criticism.

One of Nozick's central concerns was asking the question under what conditions a distribution of holdings can be considered just. Contrary to Rawls, who believed in accordance with the difference principle that economic inequalities are only justified if it can be said that they are "to the greatest benefit of the least-advantaged members of society" (Rawls 2001, 42-43), Nozick put forward what he called the "entitlement theory". The entitlement theory stipulates that a given distribution of holdings is just if the holdings in it were acquired and passed on in a just manner. In this spirit, Nozick famously proclaimed, "[w]hatever arises from a just situation by just steps is itself just" (Nozick 1974, 151).

According to Simmonds and Neoh, the argument is the following. Nozick starts out with the premise that "each person has a basic right of exclusive self-ownership" (Simmonds & Neoh 2021, 98). They argue that in Nozick this basic right "gives rise to property rights in other resources by individuals 'mixing their labour' with unowned resources" (Simmonds & Neoh 2021, 98). Holding these property rights over resources, one can then transfer resources "to others, who thereby acquire ownership in turn" (Simmonds & Neoh 2021, 98). Crucially, as Simmonds and Neoh note, a "series of individually just transfers might result in a few people owning the great bulk of the resources, while the majority of people have

very little. Given a just history, however, the inequality of such a resulting distribution would not amount to an injustice” (Simmonds & Neoh 2021, 98).

As regards Nozick’s definition of freedom, Cohen observed that to Nozick “I am unfree only when someone prevents me from doing what I have a right to do” (Cohen 1995, 59). Cohen called this way of defining freedom a “*rights definition of freedom*” (Cohen 1995, 59). While I prefer to call Nozick’s definition a justice-based one to highlight the fact that what rights (Hohfeldian privileges and duties) people have are derived from an understanding of justice, nothing turns on the matter in the context of our present discussion. Indeed, Cohen clearly observed and criticized the fact that in Nozick “freedom and justice are closely related matters” (Cohen 1995, 53).

Now, one front on which Cohen attacked Nozick’s definition of freedom was with regard to the way Nozick characterized the relationship between freedom and property. Cohen’s argument is that since Nozick uses a justice-based definition of freedom together with the claim that “people have a moral right to property they legally own [...] one reaches the result that the protection of (legitimate) private property cannot restrict anyone’s freedom” (Cohen 1995, 59).

The idea is the following. If you legitimately own a plot of land and I enter on your land without your permission and I am subsequently removed from your property by the state, then I am not rendered unfree under Nozick’s conception of freedom. The reason for this is that entering your land is not among the actions permissible for me to exercise. Thus, my entering your land counts as exercising license, not freedom. Therefore, the state by removing me from your land has not restricted my freedom, but merely constrained my license. If neither the rich nor the poor are subjected to rights-violating interference, they are in this regard equally free.

Cohen, however, maintained that this way of speaking about freedom contravenes a “banal truth”, namely that the state in removing me from your property “places a restriction

on my freedom” (Cohen 1995, 55).⁴⁴ If I, for example, attempt to set up a tent in your garden and the state subsequently interferes with me on your behalf by removing me from your property, Cohen’s verdict is that I “suffer a constraint on my freedom” (Cohen 1995, 56). Similarly, Cohen believed it is also true that when property rights are restricted – assume that it is legal for me to pitch my tent in your garden – then, provided that this right would be enforced against you, I would gain freedom while you would lose some. In Cohen’s words: “The general point is that incursions against private property which *reduce* owners’ freedom by transferring rights over resources to non-owners thereby *increase* the latter’s freedom” (Cohen 1995, 57). Therefore, according to Cohen, from a point of view that considers freedom empirically, “private property, like any system of rights, pretty well *is* a particular way of distributing freedom *and unfreedom*” (Cohen 2011, 152).⁴⁵

The noteworthy conceptual point which Cohen made about freedom is, therefore, that enforced rights do have an effect on freedom, but they are not themselves what defines freedom. At least as much is true under Cohen’s empirical conception of freedom which specifies freedom independently of rights: “I am *pro tanto* unfree *whenever* someone interferes with my actions, *whether or not I have a right to perform them, and whether or not my obstructor has a right to interfere with me*” (Cohen 1995, 59). From that Cohen drew the conclusion that if we accept his analysis of the relationship between property rights and freedom, “libertarians cannot complain that a socialist dispensation restricts freedom, *by contrast* with the dispensation they themselves favour” (Cohen 1995, 56). In other words, as Ian Carter notes, if we can conclude that private property (if enforced) is constitutive of a certain distribution of freedom and unfreedom, “then it will no longer be clear whether

⁴⁴ Note that in the second chapter of *Self-Ownership, Freedom, and Equality* (1995) Cohen argued that the state places a restriction on my freedom “if the state prevents me from doing something that I *want* to do” (Cohen 1995, 55; my emphasis). This suggests a desires-based approach to the definition of freedom. Later in the same chapter, Cohen however presented a definition of freedom that does not suggest that having a desire to do x is a precondition for being free to do x (Cohen 1995, 59).

⁴⁵ For a similar argument, see Jones 1982.

greater individual liberty is guaranteed by capitalist or by socialist structures of property rights” (Carter 1992, 41). Conceiving of freedom in this way, then, enables egalitarians to make a freedom-based argument against certain distributions of holdings. For instance, endorsing a principle of equal freedom where freedom is conceived empirically might thus require that the holdings within society are distributed equally, not merely that everyone’s rights are respected.

This argument has also important implications for the relationship between freedom and money. Cohen argued that “the lack of money *is* (a form of) lack of freedom, in the favoured sense of freedom, where it is taken to be absence of interference” (Cohen 1995, 57-58). To drive home this point, Cohen constructed an interesting thought-experiment. The idea is to “begin by imagining a society without money, in which courses of action available to people, courses they are free to follow without interference, are laid down by the law” (Cohen 1995, 58). And further, suppose that “[t]he law says what each sort of person, or even each particular person, may and may not do without interference, and each person is issued with a set of tickets detailing what she is allowed to do” (Cohen 1995, 58). Imagine now that “[e]ach ticket lays out a disjunction of conjunctions of courses of action that I may perform” (Cohen 1995, 58). For instance, “I may do A and B and C and D OR B and C and D and E OR E and F and G and A, and so on” (Cohen 1995, 58). However, “[i]f I try to do something not licensed by my tickets or ticket, [an] armed force intervenes” (Cohen 1995, 58; my insertion). The point of this thought-experiment is that in it the “tickets say what my freedoms (and, consequently, my unfreedoms) are” (Cohen 1995, 58). From this Cohen drew the conclusion that in the real world “a sum of money is nothing but a highly generalized form of such a ticket” (Cohen 1995, 58).

Indeed, according to Cohen “[a] sum of money is a licence to perform a disjunction of conjunctions of actions – actions, like, for example, visiting one’s sister in Bristol, or taking home, and wearing, the sweater on the counter at Selfridge’s” (Cohen 1995, 58). Take

the example of a woman who “is too poor to visit her sister in Bristol” (Cohen 1995, 58). According to Cohen “as far as her freedom is concerned, this is equivalent to ‘trip to Bristol’ not being written on someone’s ticket in the imagined non-monetary economy” (Cohen 1995, 58). Now the crucial point in the example is that the “woman has the capacity to go to Bristol. She can board the underground and approach the barrier which she must cross to reach the train” (Cohen 1995, 58). However, Cohen argued that the upshot of the woman attempting to travel to her sister in Bristol without the necessary money is that she “will be physically prevented from passing through it [the barrier], or physically ejected from the train [once boarded]” (Cohen 1995, 58; my insertions).

The trouble is of course that if we apply Nozick’s justice-based conception, the judgments about the tent example would not follow Cohen’s logic. Instead, as Cohen highlighted, “[i]t will follow from the moral endorsement of private property that you and the police are justified in preventing me from pitching my tent on your land, and, because of the rights definition of freedom, it will then further follow that you and the police do not thereby restrict my freedom” (Cohen 1995, 59). Moreover, if freedom is merely about the entitlements we have vis-à-vis one another, it would seem that money has no bearing on our freedom employing a justice-based conception of freedom. Thus, one may conclude that Nozick’s justice-based conception of freedom could simply object to the conclusions generated by the empirical conception advanced by Cohen.⁴⁶

Cohen, however, believed there was a way to determine which conception we ought to choose. He tried to show that a justice-based conception of freedom “is unacceptable” because he believed “[i]t is false that, in order to determine whether actions which ‘place limits on one’s available opportunities’ make one (*pro tanto*) unfree, it is necessary to

⁴⁶ However, there are other lines of argument possible. A justice-based conception may see the rich and the poor as unequally free. We will turn to this shortly.

investigate whether the resulting limits on opportunities are wrongfully produced” (Cohen 1995, 59-60).

There are three arguments which Cohen put forward in this context that are directed against justice-based conceptions of freedom generally and Nozick’s conception in particular. The first is that justice-based conceptions of freedom offend common linguistic intuitions we have about freedom. The second is that Nozick inhabits an inconsistent position, for he employs two conceptions of freedom. The third is that a justice-based conception of freedom leads to freedom falling out of the picture. In what follows, I will analyze the respective arguments. To my mind, only the last one is promising.

2.2 Freedom and Linguistic Intuitions

In this section, I will deal with Cohen’s criticism based on an appeal to linguistic intuitions. I will argue that the argument fails to establish that we should reject justice-based conceptions of freedom.

The first argument is an argument about the way Cohen believed we ordinarily employ the term “free”. According to Cohen, it is linguistically intuitive to say that a “properly convicted murderer is rendered unfree when he is justly imprisoned” (Cohen 1995, 60). Contrariwise, from Cohen’s point of view, it would be linguistically counterintuitive to assert “that a properly convicted murderer is not rendered unfree when he is justifiably imprisoned” (Cohen 2011, 153). Indeed, Serena Olsaretti argues that on a justice-based definition, someone’s “freedom is curtailed only insofar as he is prevented from doing what he has a right to do. Thus, punishing a thief by either exacting compensation or through imprisonment does not in this view amount to limiting his freedom” (Olsaretti 2004, 116). If true we might find this is a linguistically counterintuitive verdict and want to say instead that an imprisoned murderer (justly or otherwise) is simply rendered unfree through his

imprisonment. We may want to say that this is an empirical fact that should be reflected in the way we speak about freedom. Call this the “prisoner objection” (Bader 2018A, 152). I shall add, using a justice-based definition would require us to say that a murderer by killing another person has done something which he was not free to do. This also might strike us as linguistically counterintuitive. In this spirit, in *An Essay on Rights* (1994), Steiner argues that “there is something more than a little odd about conceptions of liberty that logically commit us heroically to denying that you were free to do what you, in fact, did” (Steiner 1994, 7). And, according to Steiner, we should also be “troubled by the idea that someone’s stopping you from doing things doesn’t curtail your freedom” (Steiner 1994, 7).

Employing an empirical view of freedom of course entails that if we prevent someone from raping another, then this renders the would-be rapist unfree. As suggested by John Gray in his critique of Cohen, this verdict might strike us as rather counterintuitive as well (Gray 1993, 141). However, to Cohen, from the empirical judgment that the would-be rapist loses freedom by being prevented from raping, does not follow a moral endorsement of the freedom to rape. The fact that the would-be rapist, according to Cohen, “loses a freedom requires no judgement about moral rights nor any value judgement whatsoever, and not, in particular, the judgement that [...] there is some value in the rapist’s freedom to rape” (Cohen 1995, 64). In other words, espousing an empirical conception of freedom does not necessitate the belief that all restrictions on freedom are unjustified. As we have already established, on an empirical approach, the assertion of the existence of a freedom does not equal its moral endorsement. Thus, we might say, with Cohen, that Nozick’s conception of freedom is to be eschewed because justice-based conceptions in general are inimical to the way we ordinarily use the term “free”, while empirical conceptions are more in line with our linguistic intuitions. There are two points I will make to rebut this position.

Firstly, Ralf Bader has shown that the prisoner objection can in some sense be defused. Indeed, while the justified imprisonment itself is not classified as a constraint on

freedom (as it would be on an empirical approach), the prisoner can still be regarded as less free. On a justice-based approach, Bader notes, someone who is justly imprisoned has less freedom than a non-imprisoned person because “of the fact that the range of actions that are permitted to a prisoner is vastly reduced” (Bader 2018A, 155). Indeed, as Bader observes, “[s]ince there are very few things that a prisoner has a right to do, there is not much that he is free to do” (Bader 2018A, 155). For example, contrary to a non-imprisoned person, the prisoner does not have the permission to go to the local cinema and watch a movie. If the prisoner were to exercise that action, he would be exercising license, while this is not the case for the non-imprisoned person. Therefore, if we compare prisoners and the non-imprisoned with respect to the number of permissible actions available to them, then we will find that the non-imprisoned have a higher amount of them than the prisoners. In turn, for the imprisoned more of the total amount of actions in principle permissible falls into the domain of license than for the non-imprisoned.⁴⁷

This logic can also provide us with a reason for saying that a poor person and a rich person are not equally free. Bader suggests that both, the poor and the rich person, are permitted to do the same kind of things in a general sense (action-types), yet a rich person has more permissible ways of doing these things (action-tokens) (Bader 2018A, 156). The idea is that both, the rich and the poor, are allowed, for example, to buy a house in the sense that there is no normative requirement for either of them to abstain from buying a house. Thus, we may say that the general action of buying a house (action-type) is equally open to the rich and the poor. However, poor people lack the specific permission to buy any particular house (action-token). This is the case since to acquire any particular house *a* what is required is not a general permission to acquire houses but a specific permission to acquire that particular house *a*. However, having the permission to acquire *a* requires the transfer of

⁴⁷ On that point, see also Intropi 2021, 427.

a certain amount of money. Insofar as poor people lack the necessary amount of money, they lack the freedom to acquire *a* permissibly (action-token). In that sense, Bader concludes, “the poor and the rich are equally free in terms of action-types, yet they differ in terms of the number of action-tokens they are free to perform” (Bader 2018A, 157).⁴⁸ Imprisoned people compared to non-imprisoned people, then, do lack in terms of, both, action-types and action-tokens (Bader 2018A, 157). Thus, although Nozick does not explore this line of argument, employing a justice-based conception of freedom it is possible to establish a significant difference between poor people and rich people as well as between prisoners and the non-imprisoned.

Secondly, one can always reply to arguments based on an appeal to linguistic intuitions that one simply does not share the intuitions in question. It is, indeed, not at all absurd to use a justice-based conception of freedom in ordinary speech. In fact, the distinction between “liberty” and “license”, which is central to justice-based conceptions of freedom, is used in ordinary speech. For instance, when we complain that a murderer’s killing someone was a vile act of license, we are not making an empirical statement about the possibility of action, instead we are making a normative statement, implying that a person was not free (in a deontic sense) to do what he actually did (in a physical sense). In other words, we are denying that someone had the normative freedom to do a certain thing, despite the fact that the physical freedom to do that very thing was available to that person.

Take the following example. Suppose my car has broken down and my brother offers me to take one of his two cars. I then ask him which one I may take, and my brother answers “You are free to take either”. In this case, my brother plainly does not mean that I have the physical opportunity to take either of the two; instead, he gives me permission to choose whichever I want. Through his use of the term “free”, he makes it clear that he confers upon

⁴⁸ Note, however, that X’s having the specific permission to acquire *a* from Y, does not mean that Y is obligated to sell *a* to X; at least this is the case if X’s specific permission is not protected by a duty in Y to sell to X.

me a deontic opportunity. Thus, to me at least, it does not seem odd to use a justice-based conception of freedom in ordinary speech, and my suspicion is that many people would reach a similar verdict. The problem manifestly is, how do we establish the validity of an intuition about freedom? Surely, it is the fact that it is held by some people in some situations, not that everyone shares it all the time. It is thus not wise to attempt to settle conceptual matters by appealing to linguistic intuitions alone.⁴⁹

Suppose further that I understand my brother's use of "free" as designating physical possibility instead of deontic permissibility, and let us assume that the garage is locked. Aware of the fact that the garage is locked, I answer to him "What do you mean, I am free to take either of your two cars? It is not physically possible for me to go into the garage and take either of them". This answer leaves my brother perplexed. If this is how the conversation proceeds, I manifestly have made a category mistake and did not understand my brother's meaning. Thus, the fact that the freedom-ascriptions of empirical and justice-based conceptions can be characterized by what Kramer would call "extensional non-equivalence" (Kramer 2010A, 836), in the sense that they do not match, is not a conclusive reason to reject either of the conceptions. The fact that different conceptions of freedom return divergent verdicts about people's freedom is due their being different, not to one of them being defective.

In summation, while common-sense linguistic intuitions are indeed important, and clearly our philosophical reasoning should not be completely divorced from them, we have to accept that we can have a multitude of linguistic intuitions about freedom. Thus, it must be more than an alleged incongruence with linguistic intuitions about the use of "free" that discredits justice-based conceptions of freedom.

⁴⁹ It is, of course, plausible that there is what in Chapter III I will call a minimum requirement for conceptions of freedom to be in keeping with ordinary speech. If someone were to define "free" as referring to the height of people that would certainly be a use of the term to which we should object.

2.3 Robert Nozick's Inconsistent Position

A second point of criticism that Cohen put forward was directed more specifically against Nozick's occupying an inconsistent position on freedom because of the latter's oscillation between two different senses of freedom. In this section, I will argue, however, that this is a problem distinctly associated with Nozick's thought and does not provide a reason for rejecting justice-based conceptions of freedom in general.

The gist of Cohen's criticism was that Nozick had put forward arguments suggesting that he meant freedom empirically while at the same time arguing for a justice-based definition of freedom. More concretely, Cohen saw Nozick as presenting "himself as a defender of unqualified private property *and* as an unswerving opponent of all restrictions on individual freedom" (Cohen 1995, 55). According to Cohen, however, Nozick "cannot coherently be both" (Cohen 1995, 55). Indeed, under Nozick's justice-based conception, not all restrictions amount to a curtailment of freedom – only those which are in violation of people's property rights. Thus, there are justified restrictions consistent with people's property rights that do not render the restricted person unfree and unjustified restrictions violating people's property rights that do render the restricted person unfree. Cohen's charge was that if one espouses a justice-based definition of freedom, then, *per definition*, one is committed to the view that not all restrictions count as a reduction of freedom. Thus, espousing a justice-based conception of freedom renders it impossible to be an opponent of all restrictions on individual freedom. Indeed, by putting forth a justice-based definition, Nozick was already implying that this is not his position. Therefore, Cohen was correct in holding that it is in fact inconsistent to argue against restrictions in general, while in the same breath employing a justice-based conception of freedom.

Yet, Cohen believed that right-libertarians had the tendency to inhabit this inconsistent position in order to justify what was in fact an untenable position. The move about which Cohen complained is that right-libertarians (exemplified, of course, by Robert

Nozick) “want to say that interferences with people’s use of their private property are unacceptable because they are, quite obviously, abridgements of freedom, *and* that the reason why protection of private property does not similarly abridge the freedom of non-owners is that owners have a right to exclude others from their property and non-owners consequently have no right to use it” (Cohen 1995, 60). However, if the first part of the sentence is meant as an empirical statement to the effect that interferences always reduce freedom, while the second part of the statement is implying that only rights-violating interferences matter, this is clearly employing two different senses of freedom: a justice-based sense of freedom to justify that the enforcement of property rights is consistent with individual freedom and an empirical sense which establishes that any interference with private property is a reduction of freedom because interference always curtails freedom.

In other words, from Cohen’s point of view, Nozick wanted to justify property rights as being good for freedom, for which he needed to conceive of freedom independently of rights. Indeed, Cohen’s position is that one cannot say that certain rights are good for freedom while simultaneously defining freedom in terms of rights. One thing being good for another implies that we are speaking of two distinct things. However, to Cohen, Nozick also wanted to conceive of freedom in a justice-based way to argue that enforcing property rights does not restrict the freedom of the people subjected to that enforcement. This later position, however, is defining freedom in terms of rights. Thus, Cohen criticized Nozick for wanting his cake and eating it, too. To Cohen, Nozick wanted to hold simultaneously the judgements of a justice-based and those of an empirical approach to freedom, which Cohen regarded as an inconsistent position. Thus, Cohen complained, right-libertarians “go, back and forth, between inconsistent definitions of freedom, not because they cannot make up their minds

which one they like, but under the propulsion of their desire to occupy what is in fact an untenable position” (Cohen 1988, 296).⁵⁰

Now, I am willing to grant to Cohen that his interpretation of Nozick’s position is correct, and that the latter indeed was unable to advance a consistent position on freedom. However, all we can take from this is that Nozick’s position on freedom was incoherent, and not that there is something wrong with justice-based conceptions of freedom in general. Clearly one does not have to muddle the waters in the way Nozick did. In employing a justice-based conception, one can simply acknowledge the fact that a general appeal to freedom (as the absence of restrictions) is inconsistent with it. Put differently, it is true that a justice-based conception of freedom does not regard all restrictions as constituting cases of unfreedom, and hence employing it the general appeal against such restrictions is foreclosed. However, theorists favoring a justice-based conception of freedom always have the option of dropping the freedom-language that supposes that all restrictions constitute unfreedom.⁵¹

Therefore, so far, it seems Cohen’s criticism is unable to establish what it wants to establish, i.e. that we should refrain from endorsing a justice-based conception of freedom. We have indeed seen that the argument from linguistic intuitions cannot be regarded as decisive and the incoherence charge leveled against Nozick’s conception of freedom is, at best, a problem for Nozick’s position, not for those who espouse justice-based conceptions in general.

⁵⁰ On this point, see also Bader 2018A, 161-62 and Olsaretti 2004, 118.

⁵¹ Later in the chapter, I will propose a different solution to the problem.

2.4 Freedom Falls out of the Picture

In this section, I will argue that Cohen put forward a more promising argument against justice-based conceptions of freedom by arguing that employing such conceptions “[f]reedom falls out of the picture” (Cohen 1988, 296). However, I will argue that this argument remained underdeveloped in Cohen.

Cohen was aware that right-libertarians can escape the inconsistency charge discussed in the last section. He acknowledged that libertarians “can escape inconsistency by contriving to justify private property on grounds other than considerations of freedom” (Cohen 1988, 296). Expressed differently, a theorist, as I suggested in the last section, can always opt for dropping the freedom-language that presupposes an empirical understanding. Cohen, however, criticized this move by arguing that we would “have a defence of private property on grounds of justice” (Cohen 1988, 296). He thus followed that “[f]reedom falls out of the picture” (Cohen 1988, 296).

This latter point of freedom falling out of the picture is indeed the central point and constitutes, in my opinion, the core of Cohen’s case against using justice-based conceptions of freedom. On a justice-based conception, we have seen, we first need to define what rights people have as a matter of justice. Only then can we answer the question as to whether a person is in fact free or unfree to do a certain thing by establishing whether a certain action is permissible or not. We, thus, may say that a justice-based conception of freedom is in the end derived from our specific understanding of justice. That means, in Cohen’s words, “we do not know what liberty is until we have a freedom-independent characterization of justice” (Cohen 1995, 62). This, to Cohen, is an unpalatable consequence of defining freedom in terms of justice, for there is no independent definition of freedom anymore. Therefore, in Carter’s phraseology, freedom loses its status as an independent ideal (Carter 1995; 1999, 69-74).

Cohen's argument is the following. When we appeal to freedom using a justice-based conception of freedom, we are not directly appealing to freedom as such – understood by Cohen as the absence of interference – but rather making an appeal to the conception of justice underlying it. In consequence, under a justice-based conception, freedom changes its character once we make conceptual changes to our notion of justice. Thus, it is impossible to specify once and for all what counts as a reduction of freedom and what not, if people hold different conceptions of justice because there is no characterization of freedom that is independent of justice. Cohen's worry is that employing a justice-based conception of freedom amounts to the ideal of freedom falling out of the picture.⁵²

This is the most promising criticism advanced by Cohen. It is in fact true that the independent status of freedom *per definition*, cannot be captured by a justice-based conception of freedom. Cohen apparently saw that as a major disadvantage of employing justice-based conceptions of freedom. Nonetheless, the fact that freedom loses its status as an independent ideal by itself does not suffice to justify our discarding justice-based conceptions of freedom. Only if we need to be able to appeal to freedom as an independent ideal, can we conclude that justice-based conceptions are missing something important.

Expressed differently, employing freedom as an independent ideal, allows us to evaluate a situation based on freedom as such. This clearly is not possible under a justice-based conception of freedom. However, this argument has only shown what is analytically true and does not yet demonstrate that we shall be missing something *important* if we are unable to assess a situation in this manner. Whether or not we should conceive of freedom in an empirical manner is tied to the significance of whatever value freedom has as an ideal independent of justice. Despite the central importance of this matter, Cohen never developed

⁵² Cohen generally espouses a conception of freedom as ability. However, in Cohen 1995, chapter 2, Cohen's criticism is based on an understanding of freedom as non-interference (Cohen 1995, 59). At any rate, what matters for Cohen's argument is that freedom is understood empirically; whether freedom is centered around the notion of ability or interference does not change the nature of the criticism (see Carter 2011).

a full account of why freedom ought to be understood as an independent ideal. What he put forward was a promising criticism by arguing that freedom falls out of the picture once we define freedom in terms of justice. However, he did not devote the same attention to showing what consequences this has for normative theorizing apart from (potential) challenges to how he thought we commonly use the term “free”. The most sophisticated argument for freedom’s independent value can be found in Ian Carter’s work who is influenced by Cohen’s criticism of justice-based definitions of freedom. We shall now turn to Carter’s position on justice-based conceptions of freedom.

3. Carter Against Justice-Based Conceptions of Freedom

In this section, I will demonstrate how Ian Carter has built on the criticism of justice-based conceptions of freedom advanced by Gerald Cohen. I will show how Carter shares some of Cohen’s intuitions about the use of the term “free”, and the relationship of freedom to private property and money. In keeping with Cohen’s original argument about freedom and property, Carter had initially criticized, in *A Measure of Freedom* (1999), justice-based conceptions of freedom by distinguishing between a view on freedom which is substantive as opposed to one which is merely formal. The idea is that justice-based definitions imply a formal view on freedom, while empirical conceptions imply a substantive view. Even though there is some initial plausibility to this line of argument, the force of the distinction is questionable for at least two reasons (the first of which was discussed by Carter himself). Firstly, justice-based conceptions can be defined so as to incorporate what we may call substantive concerns about freedom, as seen in Ronald Dworkin (Dworkin 1987). Secondly, within a given conception of justice, substantive concerns may be integrated at a different stage, after one has addressed formal concerns. This strategy can be found in Rawls (Rawls

2001, 148-150).⁵³ The most promising criticism in Carter, then, is the notion that under a justice-based conception of freedom, freedom “gets sacrificed as an ideal” (Carter 1999, 71) because it loses the status as an independent ideal. I will sketch out why Carter believes this to be the case. However, I will argue that while it is indeed justified to take into account the independent value of freedom, that does not mean we have to refrain from defining freedom *also* in terms of justice. I will argue that we should take seriously Carter’s idea that we ought to choose a given structure of rights based on the effect that structure would have on the distribution of freedom as such, but we can pursue that inquiry without rejecting justice-based definitions and denying their importance for normative theorizing.

3.1 Substantive Versus Formal Freedom

In this section, I will deal with the view that justice-based conceptions of freedom espouse a view of freedom that is merely formal, which is concerning for the egalitarian. I will argue, however, that the employment of a justice-based conception of freedom does not presuppose any particular understanding of justice.

Carter explicitly builds on Cohen in Chapter III of *A Measure of Freedom* (1999). Carter shares Cohen’s intuition about freedom to the effect that one’s (enforced) right to property renders other people less free. To Carter, this much can be established regardless of whether or not we find it morally justified that we have a right to property. Similarly to Cohen, Carter, in appealing to our linguistic intuitions, writes: “[a]ccording to most people’s linguistic intuitions, there are just restrictions of liberty and unjust restrictions of liberty” (Carter 1999, 70). To Carter, Cohen was right in criticizing Nozick’s position by arguing that enforcing private property rights does in fact constitute a distribution of freedom and

⁵³ There seems to be a hint of the second reason in Carter 2011, 487 fn. 3. However, Rawls’s position receives no explicit discussion in Carter 2011.

unfreedom. Carter thus shares the judgment that “[m]y having and successfully exercising an exclusive right to a piece of land means that I am free to walk on that land *and* others are *unfree* to do so” (Carter 1999, 71).

Moreover, Carter agrees with Cohen on the latter’s description of the relationship between money and freedom. Carter writes: “we see that in any given moment, money in my possession determines in part whether or not others decide to prevent me from doing certain things” (Carter 2005, 223; my translation). Carter builds on Cohen’s line of thought in arguing that “the error of the egalitarians as well as their libertarian critics is to focus on the *condition* of the poor and not on the *obstacles* which other people pose to the poor” (Carter 2005, 224; my translation). To Carter, if I lack the money to do a certain thing, my unfreedom “is not caused by my lack of money, but by other people who decide to impose impediments as long as I lack the necessary money” (Carter 2005, 224; my translation). Thus, Carter is in explicit agreement with Cohen when the former argues that “money is best thought of as ‘a [highly generalized] license to perform a disjunction of conjunctions of actions’” (Carter 1999, 235; Carter’s insertion). Therefore, also to Carter this line of argument entails that the distribution of income and more generally the holdings in a given society matters for freedom. If that distribution has an effect on the distribution of freedom in society, then, plausibly, if we believe that freedom is valuable, we ought to have something to say about how the holdings in society are to be distributed.

Recall that in Nozick’s story, we do not have to care about the distribution of the holdings between people as long as the distribution itself was not produced by injustice. As long as people’s property rights are respected and the distribution itself was produced by just market transactions, everyone enjoys equal freedom, regardless of the distribution of holdings (Nozick 1974, 151). Against this libertarian position, Carter argues with Cohen that we cannot say that poor people are as free as rich people, even if they share the same rights.

Instead, we should say that despite the fact that poor people and rich people are equally endowed with the right to property they are unequally free.

However, as we have seen in the last section, also a justice-based conception of freedom can detect a difference between the freedom of poor and rich people. While it is true that the rich and the poor as well as the imprisoned and the non-imprisoned are in some sense equally free if they are not subjected to rights-violating interference, building on Bader, I argued that a freedom-significant difference can still be established. The poor have less permissible action-tokens than the rich, and the (justly) imprisoned have both less permissible action-types and permissible action-tokens than the non-imprisoned. However, often thinkers do not make use of the distinction between permissible action-types and permissible action-tokens. Moreover, plausibly, when we argue that justice requires every citizen to have a right to run for office, what we mean is the general action-type of running for office, not the action-token of running in a particular election. Thus, where rights are conceived of as (vested) permissible action-types rather than (vested) permissible action-tokens, it has some *prima facie* plausibility that freedom is defined merely formally. This is because, as we have seen, the normative freedom of running for office does not imply the physical freedom of doing so.

In this spirit, Carter had initially criticized Rawls in *A Measure of Freedom* (1999) for distinguishing between “liberty” and “the worth of liberty”. As we have seen in Chapter I, Rawls understood liberty in terms of certain fundamental rights which he regarded as basic given their function within *justice as fairness*. Importantly, and in line with what I argued in Chapter I, to Rawls “the inability to take advantage of one’s rights and opportunities as a result of poverty and ignorance, and a lack of means generally” (Rawls 1999, 179) is not understood as restricting freedom. Instead, Rawls saw “these things as affecting the worth of liberty, the value to individuals of the rights that the first principle defines” (Rawls 1999,

179). Thus, a poor person might have the right to run for office, without it being physically feasible for her to do so.

Against this way of making sense of the distinction, in *A Measure of Freedom* (1999) Carter argues that “what Rawls calls ‘the worth of liberty’ is exactly what many would call ‘liberty’” (Carter 1999, 82) and that “what Rawls calls ‘basic liberties’ is what might be more felicitously termed ‘formal rights’ or, in Rawls’s own words, ‘constitutional safeguards’” (Carter 1999, 82). The general gist of the argument is that “one’s possession of the formal right to do x – ‘ x ’ usually being an act-type does not imply one’s possession of the concrete, or what is often called the ‘substantive’, freedom to perform any tokens of x , and is therefore only a necessary and not a sufficient condition of ‘liberty’” (Carter 1999, 82).⁵⁴ Thus, Carter wants us to reserve the language of freedom for actual substantive (i.e. physical) opportunities and avoid using freedom-talk where we are concerned with rights.

However, Carter himself, a decade after the publication of *A Measure of Freedom* (1999), has constructed an illuminating argument which highlights that the distinction between substantive and formal conceptions of freedom breaks down in one important way. While it appears that in *A Measure of Freedom* (1999), Carter thought that arguing that the Rawlsian basic liberties are merely formal while freedom is somehow substantive carries a lot of weight in arguing against a justice-based conception of freedom, he has since acknowledged that that distinction is somewhat of a red herring. In his paper “Debate: The Myth of ‘Merely Formal Freedom’” (2011), Carter acknowledges how the “the contrast between formal and substantive freedom appears to have broken down” (Carter 2011, 491) once one considers justice-based conceptions of freedom which are not right-libertarian in nature.

⁵⁴ There is somewhat of a confusion in Carter’s remarks here. If Carter means by substantive freedom empirical freedom, then a formal right to do x is not a necessary condition for having the empirical freedom to do x .

In this paper, Carter reminds us that, for instance, the content of Ronald Dworkin's justice-based conception is very different to Nozick's. Dworkin certainly was not a right-libertarian. He was indeed known for being an egalitarian arguing that "government must act to make the lives of those it governs better lives, and it must show equal concern for the life of each" (Dworkin 1987, 7). This is in stark contrast to Nozick's position who argued that "a minimal state, limited to the narrow functions of protection against force, theft, fraud, enforcement of contracts, and so on, is justified; that any more extensive state will violate persons' rights not to be forced to do certain things, and is unjustified; and that the minimal state is inspiring as well as right" (Nozick 1974, ix). Nozick concluded that "the state may not use its coercive apparatus for the purpose of getting some citizens to aid others, or in order to prohibit activities to people for their *own* good or protection" (Nozick 1974, ix).

Carter indeed points out that contrary to Nozick, for Dworkin "'justice' means *egalitarian* justice" (Carter 2011, 491). Thus, it is true that on Dworkin's justice-based conception, freedom is defined in terms of justice. However, the conception of justice from which freedom is derived "is an egalitarian conception" (Carter 2011, 491). Thus, from Dworkin's point of view, "each and every person's morally just claim-rights [...] already include the claim to be accorded a fair share of the material means necessary to realize a life plan" (Carter 2011, 491). Expressed differently, according to Carter, "Dworkin thinks that liberty should be defined in terms of the other values within his own theory of justice, so that liberty is shown to be preserved or promoted by a just, egalitarian distribution of property" (Carter 2015, 300). Therefore, Carter notes that "where formal freedom is conceived in terms of moral norms, formal freedom can qualify as substantive freedom because it is possible for the relevant moral norms to be norms that prescribe material equality" (Carter 2011, 492). Consequently, it depends on the underlying conception of justice whether a justice-based

conception of freedom is concerned with the lot of the poor, or more generally how holdings are distributed in a society.⁵⁵

To my mind, in a similar spirit we ought to understand Rawls's distinction between liberty and the worth of liberty, which Carter has criticized (Carter 1999, 82). One way we can incorporate a concern for what we may call substantive freedom is exactly in the way Rawls did, namely by asserting that the basic political liberties ought to be effectively exercisable and by arguing that socio-economic inequalities need to be in keeping with the second principle (Rawls 1993, 5-6). The basic liberties principle alone would indeed allow for people to be accorded with certain rights (action-types) without them having the actual physical opportunity to exercise them. In fact, we have seen in the last chapter that the function of the basic liberties is not to generate a certain distribution of means between people but is related to the moral powers (Rawls 2001, 45). However, Rawls demonstrated awareness of that fact by including the provision for the fair value of political liberty into the first principle and by stipulating the second principle of justice regulating socio-economic inequalities.

Thus, it is true that one can formulate freedom, on a justice-based conception, as including only the rights we would have in an egalitarian society, but one can equally well define the basic rights people ought to have without an explicit concern for material equality (or more generally the distribution of holdings in a society) while adding other principles to one's conception of justice which are so concerned. Apparently, then, using a justice-based conception of freedom does not require us to think in a certain way about economic inequalities, or the role of the state in society more generally. Merely because one thinks that a concern for the distribution of holdings should not be expressed as a concern for freedom, does not mean that one has to be indifferent about the way holdings are distributed in society.

⁵⁵ On this point, see also Bader 2018A, 158, fn. 36.

Indeed, Carter himself admits in *A Measure of Freedom* that “to all intents and purposes one of Rawls’s principles of justice [i.e. the difference principle] is that of maximin freedom” (Carter 1999, 82; my insertion). So, clearly also Rawls was concerned with the people having the actual physical opportunity to make use of their rights. Thus, we cannot reject justice-based definitions based on the fact that we disagree with the specific conception of justice underlying them. For there are countless conceptions of justice on which freedom can be based.⁵⁶

In summation, while initially Carter seemed to believe that the distinction between formal and substantive views of freedom would help him argue against justice-based conception of freedom, he has since acknowledged that this criticism does not provide a very effective argument.

3.2 Freedom as an Independent Ideal

Despite all that, Carter would highlight that there is a different criticism undermining the persuasiveness of justice-based definitions of freedom. This criticism was adumbrated at the end of section 2, where I stated that Cohen’s more promising line of criticism is the notion that employing justice-based conceptions of freedom amounts to freedom falling out of the picture, for there is no understanding of freedom independent of justice. Only if there is a problem with not according freedom an independent status as an ideal, we have grounds to believe that justice-based conceptions of freedom get “freedom and justice the wrong way round” (Carter 1999, 69). In this section, I will outline the argument.⁵⁷

The core of Carter’s case against justice-based conceptions of freedom is centered around the notion of freedom as an independent ideal. To conceive of freedom as an

⁵⁶ For a similar argument defending an intention-based definition of negative freedom, see Dowding & Van Hees, 2007, 158.

⁵⁷ See also my remarks on the issue in the introduction.

independent ideal, we need an independent account of what freedom is, and the reason to conceive of freedom as an independent ideal is so that freedom can serve as “an independent standard of evaluation” (Carter 2021, 130). Justice-based conceptions of freedom, as has been established, in specifying what we are free to do, make recourse to a particular definition of justice. Hence, there is no independent account of what freedom is, there is no account of what freedom is *as such*. However, if there is no account of what freedom is as such, freedom cannot serve as an independent standard of evaluation. Hence, to Carter, freedom “gets sacrificed as an ideal” (Carter 1999, 71).

The idea is that if one uses a justice-based conception of freedom and says that X is free to ϕ , this involves a judgment about justice. It involves the judgment that doing ϕ does not constitute an injustice. On the other hand, if one employs an empirical conception of freedom whether X is free to ϕ is revealed through a description of empirical facts. Of course, an empirical freedom-judgment still requires the use of concepts such as actor, action, and interference. Yet, such concepts can be employed in a value-free manner and do not presuppose a definition of justice.⁵⁸ In this sense, Felix Oppenheim argued that capitalists and socialist can still find common ground for discussion in using an empirical conception of freedom which they can share even if they disagree on justice (Oppenheim 1985, 308-309).

Now, the basic premise of Carter’s arguments is that we should be interested in being free in an empirical sense, i.e. being free by virtue of simply not being interfered with by other people. Carter believes this to be the case because we should prefer a situation in which we are less interfered with to one in which we are subjected to more interference (at least *ceteris paribus*), i.e. we should prefer a situation in which we have more freedom over one in which we have less of it. To Carter, the reason why it is better to have more freedom rather

⁵⁸ On the notion of value-freeness, see Carter 2015.

than less is that having freedom as such (or “overall freedom”) is valuable. Indeed, freedom as such, to Carter, is associated with what he calls the “non-specific” or “independent” value of freedom (Carter 1995, 1999), where the “‘non-specific value’ of a freedom or set of freedoms is its value in terms of the good ‘freedom’” (Carter 1999, 33-34).⁵⁹

Crucially, Carter’s claims that to get to the non-specific value of freedom, we need to have a conception of freedom as such, which, in turn, necessitates an empirical conception of freedom. Carter’s argument is that to be able to say that somebody is free as such, requires us to make an empirical freedom-judgment about how many physical freedoms that person has at her disposal, i.e. to what degree that person is not subject to interference (Carter 2011, 491). However, as we have seen, justice-based conceptions, or moralized conceptions more generally, do not consider all interferences as abridgments of freedom. Hence, to Carter, they cannot get to what it is to be free as such, i.e. simply not interfered with as a matter of empirical fact. Thus, from Carter’s point of view, they cannot account for the non-specific value of freedom as such.

In consequence, Carter claims that freedom as such, the non-specific value of freedom, and the empirical conceptions of freedom as overall freedom come as a conceptual package: while one can conceptualize an empirical conception of freedom without theorizing about the non-specific value of freedom, Carter claims that one cannot get to the non-specific value of freedom (the value of freedom as such) without having an empirical conception of overall freedom.⁶⁰

⁵⁹ The explication of Carter’s position will take center stage in Chapter III.

⁶⁰ Note that Carter’s version of the conceptual-package argument can be disputed. For example, one can agree with the notion that to grasp the non-specific value of freedom, we need a conception of freedom as such while disputing that this necessitates an empirical conception of freedom. In fact, Ralf Bader suggests that we cannot get to the non-specific value of freedom by way of an empirical conception of freedom. He believes that to get to the intrinsic significance of freedom as such, we need a moralized conception of freedom. Thus, Bader suggests a different kind of package, where an empirical conception of freedom is substituted with a moralized one. His argument is that if options such as torturing, raping, and murdering count as genuine freedoms, then we cannot assign intrinsic significance to freedom as such because restricting these freedoms cannot be pro tanto problematic, which is the basis for the non-specific value of freedom. On the contrary, from Bader’s point of view, a moralized conception of freedom underwrites the presumption of liberty, i.e. that interference with freedom is bad as such, because we have (at least) pro tanto reasons to protect the normative freedoms

In line with this argument, Carter criticizes thinkers who use justice-based conceptions of freedom for disregarding the independent value of freedom. Carter believes that this is particularly problematic when we attempt to determine what justice requires. To Carter, then, we should take into account freedom's independent ("non-specific") value when constructing a liberal theory of justice. In that sense, Carter believes we should develop what he calls a "freedom-based theory of justice" (Carter 1999, 69), a theory of justice that incorporates freedom as an independent ideal.

There are several thinkers who do not develop an account of freedom's independent value. Rawls and Dworkin alike clearly did not think that we need to take freedom's independent value into account in order to specify what it is to satisfy the demands of justice. As discussed in Chapter I, in response to Hart's criticism, Rawls clarified that liberty as such was not to be assigned priority. Rawls argued that throughout the history of democratic thought, freedom had been understood in terms of "achieving certain specific rights and liberties as well as specific constitutional guarantees, as found, for example, in various bills of rights and declarations of the rights of man", and declared he wanted to define freedom in keeping with that view (Rawls 2001, 44-45).

Similarly, Dworkin argued that understanding "liberty" in a normative sense, as opposed to its "flat sense" as "absence of constraint" (Dworkin 1987, 6), is what counts for political purposes. He argued that an acceptable conception of liberty "will identify rights to certain designated freedoms as essential to liberty, and stipulate that government must not limit *those* freedoms without some special justification more powerful or compelling than

established by the moralized conception of freedom. Thus, to Bader, the non-specific value of freedom is distinctly associated with a moralized conception of freedom, for it can only be said for the freedoms individuated by a moralized conception of freedom that we have (pro tanto) reasons for objecting to their curtailment (Bader 2018A, 157-158; 2018B, 59-60). Carter, of course, thinks that his account of the value of empirical freedom is convincing enough to show that restricting empirical freedom is always pro tanto problematic. In Chapter III, we will see, however, that there are indeed some problems associated with his account for the value of empirical freedom. I am grateful to Ralf Bader for pushing me on this point and to Peter Stone for helpful clarifications.

the justification it requires for other political decisions, including constraints on other freedoms not protected by such rights” (Dworkin 1987, 7).⁶¹

In particular against Dworkin, Carter argues that it “is only by taking an interest in liberty in its empirical, ‘flat, ‘uninteresting’ sense that we are able to accord liberty a ‘distinct quality and value’” (Carter 1999, 72). As established, to Carter, we must define freedom empirically to be able to capture the non-specific (i.e. independent) value of freedom. Therefore, what Carter proposes is, in effect, that we clear conceptual space for freedom as such and freedom’s independent value by refraining from defining freedom in terms of justice.

This raises the question how freedom as such can be employed in normative theorizing. In this context, Carter suggests that we should be able to appeal “to freedom as one of our reasons for favouring a certain structure of rights” (Carter 2011, 491) or that “for any proposed set of rights, we want to be able to say what that set implies in terms of freedom” (Carter 2021, 137). For this kind of inquiry to be possible, Carter argues, we have to understand freedom as something that does not depend on us having rights. On justice-based conceptions of freedom this is however not the case. Thus, to Carter, in order for freedom to play a role in the justification of rights, freedom needs to be defined independently of rights.

In summation, Carter’s argument is that if we define freedom in terms of justice, then whatever normative potential is associated with freedom as such is lost. This is analytically true in case of justice-based conceptions of freedom since they do not define freedom independently of justice. This normative potential, Carter argues, is to be found in freedom’s independent value. Therefore, to Carter, where justice-based conceptions are most objectionable is their disregard of the independent value of freedom.

⁶¹ See also Bader 2018A for a similarly critical argument of the notion that freedom as such understood independently of rights has value.

4. Employing Two Conceptions Of Freedom

In this section, I will argue that it is not necessary to reject justice-based conceptions of freedom to understand freedom as an independent ideal. However, I will make the case that it is indeed interesting whether we should appeal to freedoms as such as one of the reasons for favoring a given set of rights.

Throughout this chapter, I put forth an explication of the justice-based approach to defining freedom and defended it against various forms of criticism. I have demonstrated that arguments which aim at criticizing justice-based conceptions by appealing to linguistic intuitions as well as particular views on justice cannot establish a conclusive case against them. Clearly, we can have differing linguistic intuitions about freedom, and our developing a justice-based conception of freedom does not require us to endorse a particular definition of justice. However, Carter's criticism building on the normative justificatory power of freedom as such is to be taken more seriously. His view is that if there is something important that justice-based conceptions cannot capture about freedom, then they ought to be rejected. I maintain, however, that this is not a reasonable position.

Firstly, there is a general sense in which this strikes as too stringent a requirement. Do empirical conceptions of freedom capture everything that is important about freedom? Surely not. Rather, what we should be focusing on is a conception's ability to perform a certain function. To my mind, justice-based and empirical conceptions are aimed at accomplishing different things. Justice-based conceptions are aimed at establishing what freedoms people ought to have as a matter of justice. They establish what is permissible for people to do and provide an evaluation of a given empirical situation based on this. This approach can be found, for instance, in Rawls where he aims to spell out what the essential rights and duties are that people should have in order for there to be a just society (Rawls 1999, 177-178). The empirical conception of freedom as such, on the other hand, regards

freedom as a good of which we can have more or less. Thus, this perspective implies that more freedom as such rather than less is better for us (Carter 1999, chapter 2).⁶²

My argument is that justice-based conceptions of freedom exhibit an analytically fruitful way of employing freedom-language. This is the case, firstly, because deontic categories can be rendered clearer by employing freedom-talk. For example, where Hohfeld defined a privilege as “the opposite of a duty, and the correlative of a ‘no-right’” (Hohfeld 1919, 38-39) it is illuminating to speak of a normative freedom to do something. Similarly, where Hohfeld spoke of a duty as being “that which one ought or ought not to do” (Hohfeld 1919, 38), it is of explanatory value to highlight that this implies my normative unfreedom to do something that contravenes the duty. Hence, rights-talk can be rendered clearer through normative freedom-talk. Secondly, a justice-based conception is a particular way of deriving normative (un)freedoms and using them as a way to evaluate empirical situations. A justice-based conception derives the normative (un)freedoms people have from a definition of justice and applies them to morally evaluate situations in terms of justice. In that sense, a justice-based conception of freedom can help us transform the more abstract language of justice into a more accessible action-guiding and action-evaluating one.⁶³

Now, Carter may rejoin that he is aware of the way justice-based conceptions of freedom can play a role in normative theorizing. Yet, he may simply reiterate that employing a justice-based conception of freedom is denying normative explanatory potential to freedom as an independent ideal. As we have seen, it is definitionally true that a justice-based conception of freedom cannot capture the independent value of freedom. More specifically, Carter suggests that if one defines freedom in terms of rights, one loses sight of a fruitful analytical perspective. To Carter, if we define freedom in terms of what is permissible and impermissible to do based on rights, we cannot ask anymore what a proposed set of rights

⁶² See also Intropi 2020 on the value of freedom as such. Generally, Carter’s argument for the value of freedom as such will be addressed in detail in Chapter III.

⁶³ On the issue of action-guidance, see North 2016.

“implies in terms of freedom [as such]” (Carter 2021, 137; my insertion). His worry is that this perspective drops out where we use a justice-based conception of freedom.

To my mind, this is indeed a perspective that carried a lot of weight in Cohen’s work, in particular where Cohen argued that “private property, like any system of rights, pretty well *is* a particular way of distributing freedom *and unfreedom*” (Cohen 2011, 152). Cohen seemed to be implying the following argument: is it not counterintuitive that if we only care about enforcing private property rights, that in the resulting situation people will have greatly varying amounts of empirical freedom? And if it is counterintuitive, should we not reconsider what justice demands of us in terms of what kinds of rights people have? Cohen, I believe, would want us to answer both questions in the affirmative, and, to my mind, the same is true for Carter.

Secondly, however, this kind of inquiry can be had within a pluralist theoretical framework that employs both a justice-based and an empirical conception of freedom.⁶⁴ The way this can work is by thinking about answering the question (“What does a given set of rights imply in terms of freedom as such?”) as involving two stages. The first stage is about the definition of a set of rights. Having defined a set of rights naturally raises the question as to what that set implies in terms of just conduct. For the purpose of spelling out what just conduct is, we can employ the justice-based freedom-language. The normative freedoms that are particularly important in this context (as indicated by our understanding of justice) are those that receive protection by vesting them with duties. Based on this, a justice-based conception of freedom can tell us when people act in conformity with their rights or when they transgress them. In a second stage then, once we have arrived at a given set of rights that we think justice requires, we can ask how well this set of rights does in terms of overall

⁶⁴ Pietro Intropi seems to suggest something similar in discussing the value associated with the opportunity to perform morally impermissible actions. See Intropi 2021, 431.

freedom, which is employing freedom as an independent ideal.⁶⁵ Thus, while it is indeed interesting to inquire what a given set of rights implies in terms of freedom as such, we do not have to reject justice-based conceptions to pursue that inquiry as long as we are aware of the fact that justice-based and empirical conceptions can fulfill different functions: a justice-based conception uses freedom-language to spell out what a given set of rights requires in terms of just conduct and when people act in violation of those rights; an empirical conception of freedom can assess what that set of rights implies in terms of freedom as such.

In summation, it is not the case that we have to make a choice between justice-based conceptions and empirical conceptions. We merely have to know when and for what purpose they are to be employed in normative theorizing.

Conclusion

In this chapter, I analyzed Carter's notion that justice-based conceptions of freedom are defective as they fail to conceptualize convincingly the relationship between freedom and justice. I argued that justice-based conceptions of freedom rely in an important way on the deontic categories of permissibility and impermissibility. This is on the contrary to empirical conceptions of freedom which do not require the use of those categories. I then put forward a critical analysis of Cohen's argument against justice-based conceptions of freedom, arguing that the more promising aspect of his argument is where he explained that under justice-based definitions of freedom, freedom falls out of the picture. Afterward, I turned to Carter's criticism of justice-based conception of freedom which is influenced by Cohen's work. Carter puts forward a developed account of what freedom as an ideal independent is

⁶⁵ This logic is followed in Chapter IV where I develop what I call the Overall Freedom Test for the justification of rights.

and why that ideal captures something important about the value of freedom. While Carter believes that we need to reject justice-based conceptions of freedom in order to make room for the justificatory potential of freedom as such, I argued that this is, in fact, not the case. Indeed, notwithstanding that Carter believes employing a justice-based conception renders it impossible to ask what a set of rights implies in terms of freedom as such, I showed how this question can be posed employing both conceptions of freedom. However, I argued that it is indeed an interesting question whether freedom as such can be used as a standard to evaluate a set of rights.

Chapter III – Understanding Overall Freedom

Introduction

In order to answer the question as to whether it is theoretically feasible to choose a given structure of rights based on overall freedom, we need to first understand how Carter's conception of empirical freedom works. Only after having explicated Carter's conception of freedom, will we be in a position to ask whether it can serve as a normative criterion for the justification of a structure of rights. Chapter III is dedicated to this task.

In order to do so, I will first explicate Carter's conception of freedom. I will show how Carter extends MacCallum's (1967) formula to produce an aggregate conception of freedom which he terms "overall freedom". Afterwards, I will highlight that what constitutes overall freedom is an agent's continuous possession of physical components of action. I will then explain the notion that overall freedom comes down to a person's expected availability of compossible sets of actions and how defining freedom in such a way can, in theory, enable us to measure freedom like a commodity. After having outlined what overall freedom is, I will explain why it is plausible that such freedom is valuable. I will distinguish between the specific and the non-specific value of freedom. I will outline Carter's argument for the non-specific instrumental and non-specific constitutive value of freedom, arguing that the non-specific constitutive value can help defuse a problem associated with the non-specific instrumental value of freedom.

Thereafter, building on Keith Dowding and Martin van Hees (2007), I will develop a method for the analysis of the functioning of conceptions of freedom. Expanding on their work, I will argue that an adequate conception of freedom successfully completes three tasks. I call them *The Linguistic Task* (Task I), *The Value Task* (Task II), and *The Determination Task* (Task III). Task I is the requirement that a conception of freedom needs to specify freedom more or less in keeping with one of the ways we ordinarily use the term "free". In

order to fulfill Task II, a conception of freedom needs to explain clearly why freedom thus conceived is a valuable thing. This is a question which we cannot hope to answer by reference to ordinary language alone. Task III requires that a conception of freedom not only completes Task I and Task II, but that it also serves as input for a theory of justice. Thus, an adequate conception of freedom needs to help us paint a plausible picture of what social justice is. In this chapter, I will demonstrate how Carter's conception of empirical freedom successfully completes Task I and Task II. I will argue, however, that there is more analysis required in order to establish whether Carter's conception of freedom successfully completes Task III.

In section 1, I will explain how Carter's conception of freedom works. In section 2, I will reconstruct Carter's account for the value of overall freedom. In section 3, building on Dowding and Van Hees (2007), I will develop a method for the analysis of Carter's conception of freedom. In section 4, I will begin applying this method to the conception of overall freedom arguing that more analysis is required to determine whether Carter's conception of freedom can be regarded as successfully completing Task III.

1. Overall Freedom as Empirical Freedom

In section 1, I will show how Carter arrives at the notion of overall freedom by distinguishing between what it means to have a specific freedom and what to have freedom as such. I will demonstrate that what constitutes overall freedom is the possession of what Steiner calls the physical components of action (Steiner 1999, 39). Moreover, I explain how Carter believes overall freedom is in principle measurable and what kinds of judgements this would allow us to return in principle.

1.1 From Specific Freedoms to Overall Freedom

We have already established in Chapter II that an empirical conception of freedom understands freedom in terms of physical opportunity for action. In this sense, empirical conceptions point to physical freedoms, as opposed to normative ones. Yet, what exactly is physical opportunity for action according to Carter's empirical conception of freedom? In this section, we will see that for Carter, we can look at physical opportunity for action through two different lenses. One is that we can have the physical opportunity (i.e. physical freedom) to do a *specific* thing. Another is that we can have physical opportunity in an *overall* sense. Hence, to Carter, there are two ways in which we can attribute freedom to an agent employing an empirical conception of freedom. The first is by saying that a person is free to do a specific thing, and the second is "by saying that she is free to a certain degree or, in other words, that she has a certain amount of freedom (in either relative or absolute terms)" (Carter 1999, 12).

When it comes to defining what it is to be free to do a specific thing, it is helpful to go back to MacCallum's seminal paper "Negative and Positive Freedom" (1967). In it, MacCallum argued that conceptually freedom is always an expression of the same "triadic relation" that takes "the format 'x is (is not) free from y to do (not do, become, not become) z,' x ranges over agents, y ranges over such 'preventing conditions' as constraints, restrictions, interferences, and barriers, and z ranges over actions or conditions of character or circumstance" (MacCallum 1967, 314). Thus, with MacCallum we can say, for example, that Paul is free from restrictions in going to the supermarket on Sundays in Ireland (a freedom currently not present on most Sundays in Germany).

While Carter is in general agreement with the formula,⁶⁶ he believes that MacCallum has missed one important angle in his conceptualizing freedom as a triadic relation. To

⁶⁶ One of the consequences of explicating freedom through this triadic relationship is that it does away with the juxtaposition of freedom *from* something and freedom *to* something. Being free from something implies being free to do something. Carter agrees with this argument (Carter 2005, 26).

Carter, when it comes to freedom, what is important is not only the specific things we can do with it. For Carter, we can also have freedom to do things in general, i.e. freedom *as such*. More specifically, to Carter, MacCallum's formula is well-equipped to define what a specific freedom is. However, Carter believes that MacCallum's formula is not exhaustive in that it does not take note of the fact that we can be free to do things in general. This is the freedom to do things at all, independent of any specific z (Carter 1999, 16).

In arguing this way, Carter is echoing Berlin's criticism of MacCallum's formula when Berlin stated the following: "A man struggling against his chains or a people against enslavement need not consciously aim at any definite further state. A man need not know how he will use his freedom; he just wants to remove the yoke" (Berlin 2002, 36). Carter is in agreement:

"The oppressed people in Berlin's example do care about the fact that once they are rid of their chains there will be many new things that they are free to do; the point is that their minds are not focused on any of those things in particular. They value 'being free to do things' in a general, rather than in any specific sense. If they did not value the freedom to do things in at least this general sense, it would indeed be difficult to explain their dislike for their chains" (Carter 1999, 32).

Carter, thus, believes that chains are morally problematic because they remove opportunity for action from us, that is, the opportunity for physical action in general rather than any specific action. While I do not think that the dislike for chains can only be explained by appealing to the lack of opportunity for action in this general sense – clearly, a chained person can lament the fact that the specific freedom to see his family is rendered impossible – the gist of the passage still holds true. The mere fact that an enormous amount of freedoms is restricted contributes to the lack of freedom of the chained person. Put differently, the fact

that freedom as such is severely restricted in this situation adds another dimension to the unfreedom of that person we should take note of.

According to Carter, then, what we must do in order to get the full picture with regard to the physical opportunity for action available to a person is to build on the notion of a specific freedom to construct a conception called “overall freedom” (also “freedom *tout court*”) which captures what it means to have freedom as such. Carter writes: “To be more precise, the triadic relation mentioned above [by MacCallum] serves to define the concept of a *specific* freedom. The concept of overall freedom can in turn be defined as quantifying over specific freedoms, where the latter are defined at the level of the concept” (Carter 1999, 16; my insertion). According to Carter, this does not require us to abandon MacCallum’s triadic formula. Instead, we can simply amend it for the purpose of capturing overall freedom “by interpreting the ‘Z’ in MacCallum’s formula as *non-specific* in nature” (Carter 1999, 32).⁶⁷ In other words, to Carter, there is nothing wrong with identifying freedom with the notion of being free to do a specific thing. However, it is not exhaustive since there is another perspective to freedom, i.e. to have freedom as such. Carter’s argument is that to capture what it is to be free in general, we need to define freedom in a certain way, namely as overall freedom.

Overall freedom is defined by Carter as having a *set* of specific freedoms at one’s disposal. Take the following example for illustration. Wilhelm has the following set of specific freedoms available to him: *x*) walking to the grocery store, *y*) writing a book, and *z*) smoking a cigarette. Friedrich has the same specific freedoms at his disposal, but, in addition,

⁶⁷ Note, however, that Carter’s conception of overall freedom is narrower in terms of the *y* and *z* variables compared to MacCallum’s formula. *Y* and *z* are indeed understood more broadly in MacCallum’s formula as they include for instance so-called “becomings”. Carter is not prepared to quantify over the same range of variables, for he is eager to ensure that his conception remains one of negative liberty, i.e. in Taylor’s words an “opportunity concept” of freedom (Taylor 1985, 213). Carter argues: “I make no apology for this restriction of the concept of freedom, the justification of which is simply that my starting point is a *liberal* concept. When liberals talk about freedom, they do not normally refer to possible ‘becomings’ – only to possible ‘doings’” (Carter 1999, 16). Matthew Kramer disagrees with this limitation and explicitly argues that “becomings” contribute to people’s negative freedom (Kramer 2003).

has a fourth specific freedom, *w*) playing basketball in the yard. Carter would conclude that Wilhelm is less free than Friedrich, i.e. that Friedrich has more overall freedom than Wilhelm.⁶⁸ With Carter, what we have to do conceptually in order to arrive at overall freedom from the notion of a specific freedom is “imagine that various specific freedom relations can somehow be combined into an overall measure of freedom” (Carter 1999, 19). Thus, we count the number of specific freedoms at our disposal to get to the extent of overall freedom. Doing this, we “treat liberty like a ‘commodity’ or a ‘substance’” of which we can have varying degrees (Carter 1999, 19). Hence, under this view, freedom becomes a “quantitative attribute of an agent” that in principle can be measured (Carter & Steiner 2022, 243). Crucially, from a conceptual point of view, “overall freedom of an individual is always reducible in theory to a sum of his specific liberties [...]” (Carter 2005, 113; my translation).⁶⁹

In summation, Carter is arguing that, next to being free to do a specific thing, people can have different degrees or extents of freedom, which he calls “overall freedom”, and that we should care about freedom in this overall sense. Returning to the example from earlier, there is a significant difference between Friedrich and Wilhelm. Friedrich has more overall freedom than Wilhelm. This is because the set of freedoms available to Friedrich is bigger than the set of freedoms available to Wilhelm.

⁶⁸ For simplicity’s sake, I am not talking about the amount of unfreedoms Wilhelm and Friedrich are subjected to. For a complete assessment of the amount of freedom they have at their disposal those would need to be taken into account however (see Steiner 1983).

⁶⁹ This notion will be rendered more precise in due course when I will deal with the issue of measuring overall freedom.

1.2 The Constituents of Freedom

In this section, I will expand upon my remarks on empirical conceptions in Chapter II. I will argue that under an empirical conception, freedom depends on a person having possession over the physical components of action. In what follows, I will outline in more detail why this is the case.

Together with Steiner, Carter argues that what constitutes our freedom is the empirical fact that we are unprevented from performing actions. But what exactly does it mean to be unprevented from performing actions? According to Carter and Steiner, an action is constituted by its physical dimensions (also “physical components”) which “consist in the sizes of the spatio-temporal locations and material objects involved in performing the action” (Carter & Steiner 2022, 258). The idea is that if I am free to eat a gelato in my backyard, I need to be in possession of the physical components of that action. These components involve spatio-temporal locations and material objects. The spatio-temporal locations in my example are my backyard, and the time I need to eat the gelato. The material objects are the gelato itself, and, say, a bench on which I am sitting while eating the gelato. With Steiner we can then follow that, under this view, “[...] statements about the freedom or unfreedom of a person to do a particular action are [...] construable as affirmative or negative claims about that person’s (actual or subjunctive) possession of that action’s physical components” (Steiner 1994, 39). In this sense, Steiner concludes “[f]reedom is the possession of things” (Steiner 1994, 39).⁷⁰

In this context, it is crucial to note that when Steiner and Carter speak of the “possession of” physical components of actions, they have “in mind simply *de facto* physical access”. This means that terms such as “possession” or “access” are to be understood purely empirically. Thus, according to Carter, possession of material objects “has nothing to do

⁷⁰ For an analysis of Steiner’s view of freedom as possession, see Hutchinson 2004.

with the complex of normative positions which is private property” (Carter 2005, 160; my translation). Hence, the question whether or not I have a right to the physical objects currently in my possession is an entirely separate matter.⁷¹ This means that, from Carter’s point of view, if I am in possession of an apple, I am free to eat that apple. Whether or not I have a right to eat the apple is irrelevant to the ascription of freedom.⁷²

Moreover, to Carter, we are only free vis-à-vis other people. From Carter’s point of view, freedom is essentially a social concept, as he holds that a person’s “freedom is a function of what other people prevent one from doing” (Carter 1999, 25). Crucially, then, freedom does not only involve the possession of the physical components of action but also certain non-preventative relations with other people. This point, once again, is clearly expressed in Steiner where he argues: “I’m unfree to do an action, then, if control of at least one of its physical components is actually or subjunctively denied to me by another person. Conversely, I’m free to do it if I actually or subjunctively have control of all its components” (Steiner 1994, 38-39). Carter affirms: “[s]ince every action requires necessarily the use of matter and space, which Steiner calls the ‘physical components’ of action, to prevent physically an action it is necessary to have physical access to one or more of these components” (Carter 2005, 159; my translation).

Thus, returning to my example earlier, I am only free to eat the gelato in my backyard if there is no person interfering with me in my possession of the physical components required to perform the action of eating the gelato in my backyard. Consequently, there are sundry ways in which I can be rendered unfree to exercise this freedom. For instance, a person could come to my backyard and take the gelato, or he could render it impossible for me to enter my backyard by locking me into my house etc. Therefore, what empirical

⁷¹ Note that Carter believes that “there can be situations in which the total absence of effective rules of private property implies more freedom, in a purely empirical sense, than in a system of private property” (Carter 2005, 161; my translation).

⁷² As seen in Chapter II, on a justice-based approach things stand differently because permissibility is a condition for freedoms to exist.

freedom comes down to here, is a person's undisturbed possession of physical objects in spatio-temporal locations.

Moreover, under this view, physical impossibility caused by other people, and nothing else, is what constitutes unfreedom. Indeed, building on Thomas Hobbes, Carter argues that “when a highwayman confronts you with the alternatives ‘Your money or your life,’ you are free to refuse to hand over the money, as it is not physically impossible, but only very costly, for you to do so” (Carter 2008, 62).⁷³ According to Steiner, then, “a person is unfree to do an action if, and only if, his doing that action is rendered impossible by the action of another person” (Steiner 1994, 8). Prevention is thus “a relation between the respective actions of two persons such that the occurrence of one of them rules out, or implies the impossibility of, the occurrence of the other” (Steiner 1994, 33). In turn, “[i]f both such actions can occur – if they are *compossible* – then neither prevents the other” (Steiner 1994, 33). We can, then, further specify that “if two actions are such that their joint occurrence requires either (i) the same object being in different places at the same time, or (ii) different objects being in the same place at the same time, then they are impossible” (Steiner 1994, 37). Thus, “[t]hey [the two actions] are impossible by virtue of the *partial coincidence* between their extensional descriptions: object-temporal coincidence in the first case and spatio-temporal coincidence in the second” (Steiner 1994, 37; my insertion). In consequence, actions which are impossible suffer “from *extensional overlap*” (Steiner 1994, 38).

⁷³ Still, the highwayman constraints your overall freedom if he will make good on his threat. From Carter's point of view, while you may refuse to hand over the money and are in that sense free to abstain from following the highwayman's command, you are not free to refuse to hand over the money *and* keep your life. This holds only true, of course, if the highwayman would indeed follow through with his threat should you refuse to hand over the money. In fact, if the highwayman's threat is empty, then you do not suffer a restriction of freedom at all, because the highwayman would never actually interfere with you should you ignore his threat. This also entails that were we instructed to ascertain your amount of overall freedom in this situation, we would have to make assumptions about the probability that the highwayman would act on his threat. This will be made clearer in section 1.3 via distinguishing between the freedom to perform isolated actions and the freedom to perform sets of compossible actions as well as the role of dispositions in that context. I am thankful to Alexa Zellentin for having pressed me on this point.

Again, however, for this fact to constitute unfreedom this overlap has to have been caused by a human, with or without the intention⁷⁴ of doing so.

For example, if you enter my backyard and steal my gelato, I am rendered unfree to eat that gelato in my backyard. This is because you have taken possession of the physical object, the undisturbed possession of which would otherwise constitute my freedom to eat the gelato. Therefore, since freedom, to these authors, is essentially about the *de facto*, as opposed to the rightfully, undisturbed possession of physical objects within a specified spatio-temporal domain, the only way that I can render you unfree to do a certain thing is by making it physically impossible for you to either be in possession of a required physical object or by making it impossible for you to be in the required spatio-temporal domain.⁷⁵

In summation, in this section, we have established that what constitutes our freedom to perform an action is constituted by our being in possession of the physical components required to perform that action. We are free, then, to perform an action if no one is denying us possession of the physical components required to perform that action.

1.3 Sets of Compossible Actions

In section 1.2, I argued that overall freedom is defined by the set of freedoms at a person's disposal. In this section, I will elaborate on that notion arguing that ultimately overall freedom is specified as the expected set of compossible freedoms at a person's avail. In doing so, I will combine the insights of sections 1.1 and 1.2.

At this stage, it is important to stress that Carter does not conceive of freedom as consisting of "isolated actions", but of sets of compossible actions. Indeed, according to Carter, "what agents are more accurately described as free or unfree to perform are various

⁷⁴ For an intentions-based conception of negative freedom, see Dowding and Van Hees 2007.

⁷⁵ For a criticism of the physical-impossibility view, see Miller 2006.

sets of compossible actions” (Carter 1999, 227), not merely individual actions. Carter, thus, proposes to modify Steiner’s original formula of indicating the amount of freedom at a person’s disposal. Steiner had initially argued that a person’s amount of freedom comes down to the formula: $Fr/(Fr+Ur)$ (Steiner 1983, 74). In this formula “Fr” stands for the freedoms at our disposal, while “Ur” stands for the unfreedoms to which we are subjected.⁷⁶ Thus, a person’s amount of freedom ought to be indicated as a fraction which shows how many freedoms of the total possible freedoms are available to that person. For example, if Frank has 4 freedoms and 6 unfreedoms, then his total amount of freedom is 4/10.

Carter agrees with the general outlook of the formula but “suggests that Fr and Ur ought each to be understood as representing a set of spatio-temporally specific sets of compossible actions and, further, that the number representing each such set of compossible actions should be weighted by the probability of its being prevented/unprevented by others, as judged at the time of the freedom being measured” (Carter & Steiner 2022, 244).⁷⁷ What then does it mean to have a set of compossible actions at one’s disposal? In *A Measure of Freedom* (1999), Carter provides this straightforward example:

“To see the relevance of the compossibility of a single agent’s available actions to her extent of overall freedom, consider the following three actions: (a) walking down the street at time t ; (b) stealing a beer from the shop at $t+1$, (c) walking away from the shop at $t+2$. Assume that I am free to perform all three of these actions in combination, whereas you are not, because you are being followed by a policeman who would arrest you if you performed (b), so preventing you from performing (c). Assume, also, that there is nothing stopping you from performing (c) if you refrain from performing (b). Each of us is free to perform (a), free to perform (b), and free to

⁷⁶ At this stage, it is necessary to highlight that Carter makes it explicit that he places special importance on looking at people’s relative degrees of overall freedom. In doing so, he makes the argument that what counts are not so much the absolute levels of overall freedom, but rather how people fare relative to one another in terms of freedom. Since this is the way Carter thinks about measuring freedom, this means that it will not suffice to look simply at the total amount of overall freedom present in society (Carter 1999, 18).

⁷⁷ These changes have been endorsed by Steiner, and more recently both Carter and Steiner have argued that the measurement of overall freedom should always take place relative “to a given *spatio-temporal* domain” (Carter & Steiner 2022, 256).

perform (c). Yet intuitively, it is clear that I am freer than you (in a purely empirical sense) in terms of the availability of these actions” (Carter 1999, 181).

It is thus evident that in the above example, Carter’s sets of compossible actions are “(a), (a b), (a c), (a b c), whereas [...] [I] only have available the sets of compossible actions (a), (a b), (a c)” (Carter 1999, 181; my insertion). While Carter and I both have the same individual actions at our disposal – a, b, and c – only Carter can exercise them in conjunction. For Carter (a b c) is a set of compossible actions, for me it is not. Therefore, Carter is freer than I am in this example. This, to Carter, ought to be reflected in the measurement of freedom.

Note that, for Carter, Steiner’s stipulation that “an action’s significance or eligibility has no bearing on *whether* a person is free to do it” (Steiner 1994, 46) ought to be respected also in the case of sets of actions. Since, in Carter’s view, conceptualizing overall freedom is just quantifying over all individual instances of freedom and their concatenations, what is applicable to the freedom to do x is applicable to overall freedom (i.e. sets of compossible actions) as well. In other words, just because we believe that the action of stealing a beer is morally blameworthy does not mean that the action does not contribute to a person’s overall freedom. For Carter, our judgments about freedom express only physical possibility and not moral eligibility or worthiness.⁷⁸

In addition, Carter maintains that “an agent is rendered unfree to do a specific thing (here, a specific *set* of things) not only if another person is actually preventing her from doing it, but also if it is true that *were she to attempt* to do it, she *would* be prevented” (Carter 1999, 229). Take the example of me trying to walk out of the grocery store with a stolen loaf of bread in my hand. Let us imagine that in front of the exit there is a police officer waiting

⁷⁸ Matthew Kramer agrees that whether a person is free to do a specific thing is a non-evaluative question. However, contrary to Carter, he believes that overall freedom is partially evaluative (see Kramer 2003, chapter 5; 2022).

for me. The officer knows that the bread in my hand is not paid for, and he yells at me: “No step further, or I tase you!”. Now, according to our analysis so far, two conclusions need to be drawn with respect to the degree of freedom I have after being shouted at by the police officer. The first is that I am still free to make another step. The reason is that it is not physically impossible for me to do so. However, if I make another step, I will be rendered physically incapacitated by the police officer through his deploying the taser. Therefore, the second conclusion is that my making a step further is impossible with many future sets of freedoms which involve me being not physically incapacitated for the duration of the taser’s effect and/or retaining the *de facto* possession of the stolen loaf of bread. Therefore, for Carter, even before I have made another step, I experience a reduction in overall freedom. For, were I to make another step, the police officer would tase me.

Drawing these conclusions is of high conceptual significance, as is argued by Matthew Kramer. Indeed, Kramer maintains that “a lot of the reductions in anyone’s overall freedom are effected not initially through the removal of particular freedoms but instead through the removal of the conjunctive exercisability of particular freedoms” (Kramer 2017, 197).⁷⁹ Kramer writes:

“Although legal-governmental officials do take some preventative steps that eliminate the freedoms of citizens to engage in various modes of misconduct, a system of legal governance more often responds to misconduct through ex post enforcement. Insofar as the mechanisms of such enforcement operate effectively in a given jurisdiction, they undo the conjunctive exercisability of certain freedoms without initially eliminating any of those particular freedoms themselves” (Kramer 2017, 198).

Moreover, it is important to note that if in the example above there is a change in the police officer’s dispositions such that he would not interfere (by employing his taser) were I

⁷⁹ The notion of “conjunctively exercisable freedoms” is equivalent to “sets of compossible actions”.

to attempt leaving the store (maybe because he does not want to risk his own safety), then I do not suffer a reduction in overall freedom.⁸⁰ Similarly, if within a legal system there is no *ex post* enforcement, say a prison sentence for theft, because law enforcement is disposed to turn a blind eye, then I do not face a reduction in overall freedom either. This also means that our judgements of overall freedom are always probabilistic since we only find out in hindsight whether an actual removal of sets of freedoms has taken place or not. Therefore, Carter suggests that we should incorporate into freedom-calculations the probability of restrictions.⁸¹

Finally, conceiving of freedom in terms of sets of compossible actions implies that imposing costs to people reduces the amount of freedom at their avail. We have already seen in Chapter II how, to Carter, building on Cohen (Cohen 1995, 57-59), money can be understood as “a [highly generalized] license to perform a disjunction of conjunctions of actions” (Carter 1999, 235; Carter’s insertion). That is to say that “[i]n any given moment, money in my possession determines in part whether or not others decide to prevent me from doing certain things” (Carter 2005, 223; my translation). By extension, this argument entails that the imposition of costs generally reduces overall freedom. Take the example of raising income taxes by 2,000€ annually. This tax raise is impossible with all the sets of freedoms which require the additional 2,000€ for me to spend on them. Once again, the idea is that if I lack the extra 2,000€, I will likely be prevented from accessing options which would cost me the extra 2,000€.

It is important to highlight that this argument does not entail that the lack of money itself is what constitutes unfreedom. Instead, the reason why poor people can be regarded as

⁸⁰ For a detailed discussion of the influence of dispositions and preferences on overall freedom, see Carter & Kramer 2008. Importantly, the idea that dispositions affect the total amount and distribution of overall freedom in society leads Carter to reject the so-called “Law of Conservation of Liberty” famously argued for by Hillel Steiner. The Law of Conservation of Liberty states that the total amount of freedom in society can never be increased but only distributed (see Carter 2009A). This point will be of some relevance in Chapter IV, section 3.2.3.

⁸¹ On this point, see Carter 1999, 190.

less free under Carter's empirical conception of freedom is that in our market-based societies, we do exchange money for control over physical constituents of action. Carter's idea is that as a matter of empirical generalization, people will prevent us from taking control over certain physical components of action, if we do not pay for them with money. Crucially, what functions as a constraint on freedom to Carter is not money itself, but the fact that people will likely interfere with us should we attempt to take control over certain physical components of action without having made the expected payment.

For instance, when a poor person does not have enough money to buy a loaf of bread, what constrains his freedom to take control of that loaf of bread is not the lack of money itself, but interference of other people motivated by his lack of money. In other words, the poor person is interfered with because he lacks money, the money itself is not what does the constraining of freedom (Carter 1999, 235). This means, however, that the relationship between money and overall freedom is dependent on empirical circumstances such as whether people are predisposed to interfere because of a lack of money and whether the society in question uses money as a medium for exchanging goods and services. Hence, it is possible to imagine situations where money does not serve as a motivator for people to interfere with one another.⁸²

In summation, with these clarifications in mind, overall freedom is defined as "the expected availability of sets of compossible actions" (Carter 1999, 245), and what constitutes such sets is the *expected undisturbed continuous possession of physical components of action*. In that sense, Carter's approach is a necessary extension of Steiner's original position to the measurement of freedom. Indeed, assuming my not being interfered with, the more objects I have in my *de facto* possession and the more spatio-temporal locations I have access

⁸² Effectively, then, using money as a proxy for overall freedom may not hold in all cases. This point will reappear in section 3.1.3 of Chapter IV. In that section, I will highlight some of the challenges associated with using money (or financial means more generally) as a proxy for overall freedom. I am grateful to Alexa Zellentin and Ralf Bader for having pushed me on the conceptual relationship between overall freedom and money.

to, the freer I am. Therefore, what Carter's analysis shows is what it means to have expected physical freedom over time. For instance, in the example above what reduced my freedom is that I lost possession over the loaf of bread (and control over my body)⁸³ after being tased by the police officer. In losing possession at that moment, however, I did not only lose the freedom to leave the grocery store with that bread at the moment, but a set of subsequent possible freedoms involving the bread such as going home with the bread and making a sandwich.

1.4 Measuring Overall Freedom

In this section, I will analyze Carter's position that people's levels of overall freedom are in principle measurable as the extent of action available to a person. Ultimately, Carter puts forward the idea that we should measure people's levels of overall freedom through the use of freedom-units. I will explain how the argument works and will then describe what kinds of judgments about people's levels of freedom his approach allows us to make.

First off, note that the general assumption of Carter's approach is that the "extent of a person's freedom is a function of nothing other than the sheer extent of her available action" (Carter 1999, 7), whereby the extent of available action is understood "in 'sheer quantitative terms'" (Carter 1999, 170). Therefore, as Shnayderman notes "[o]n the empirical approach [as developed by Carter], the amount of overall freedom one possesses

⁸³ Note that Carter argues that when we say that an agent's resources contribute to the freedom that she enjoys, "we must include the agent's own body as one such resource" (Carter 1999, 282). Indeed, according to Carter also the internal resources – body and work – should be included in the bundle of resources a person possesses. The logic is analogous to the case of poverty. Part of the reason why people are not hindered by other people in exercising a certain set of actions is because they do not lack certain internal resources. For instance, if I am a bad snooker player and never win a professional match, people will prevent me from playing in the world championships, if I attempt to do so. This of course means that, *ceteris paribus*, handicapped people will enjoy less freedom than able bodied people. According to Carter, "[a]lso in cases where handicaps themselves turn out to be caused by nature alone or at most by human omissions, nothing prevents us, therefore, from describing the disabled person as, *ceteris paribus*, less free than the normally gifted person" (Carter 2005, 227; my translation). Again, Carter's argument is that my lack of internal resources will be the motivation of other people to stop me from pursuing certain actions.

is solely a function of the physical extension of the specific freedoms (and unfreedoms) one possesses” (Shnayderman 2016, 40; my insertion). What exactly does that mean?

In order to grasp the method of measurement proposed by Carter, it is helpful to distinguish between the terms “freedom” and “action”. Hitherto, I have used the terms synonymously, and there is, in principle, nothing wrong with doing so. Indeed, from Carter’s perspective one is free to perform actions. However, for the purposes of measurement it is helpful to regard actions as the building blocks of freedoms. For example, your freedom x to go to the supermarket, can be regarded as being constituted by a set of actions. We may say for example that going to the supermarket consists of 2 actions: *a*) leaving the house, and *b*) walking to the supermarket. Consequently, we can see that what we call a freedom to do something usually consists of several distinct actions that make up a set of actions. Intuitively the idea is that we ought to count these actions in order to ascertain the extent of action available to a person. We may thus preliminarily conclude that the freedom of going to the supermarket adds 2 actions to our overall freedom.

Now, once this elementary point is clear, there immediately arises a problem. Can we not redescribe the freedom of going to the supermarket as yielding any number of actions? For example, we may say that the freedom of going to the supermarket actually consists of many more actions: *a*) putting on your shoes, *b*) opening the door, *c*) closing the door, *d*) locking the door, *e*) walking through the yard, *f*) opening the gate etc. Therefore, one of the principal problems in ascertaining how many actions are contained in a freedom (and sets of freedoms) is, as Carter and Steiner acknowledge, that “actions can be endlessly redescribed and that they can be endlessly subdivided in space and time” (Carter & Steiner 2022, 254). Thus, it would seem that merely by having one action available to me, for example moving my index finger, I could be shown to be infinitely free. The solution which Carter provides to this problem is that we shall be counting actions through the use of units. Carter’s idea for the measurement of overall freedom is the following:

“[W]e need to divide space and time into equally sized units, and matter into equally sized units that are at least as small as the units of space. Depending on their size, physical objects will then consist in varying numbers of units of matter, and what we shall be interested in measuring is, for any particular unit of matter, the number of space-time units in which it might be located as a result of hypothetical (prevented or unprevented) actions on the part of the agent. In effect we shall not be measuring possible motions as such (despite the fact that events are often thought to consist in motions); rather, we shall be counting possible ‘occupyings’. Space and time must be thought of as an immobile *grid*, made up of a finite series of spatio-temporal *regions*. A physical object of standard volume can then be seen as a potential occupant of one or another spatio-temporally fixed region” (Carter 1999, 184).

Thus, the idea is to stipulate a standardized freedom-unit (henceforth “FU”) that allows finite measurements of the extent of action available to us. Aiming to measure the *physical* extent of action, these FUs focus “exclusively on the physical dimensions of actions understood as occupyings of equally-sized units of space-time by equally-sized physical objects under the agent’s control (including parts of the agent herself)” (Carter & Steiner 2022, 254).

The important point is that the FUs applied are uniform and allow, in principle, finite measurements.⁸⁴ The measurement of freedom, then, works analogously to the measurement of other extensive properties such as distance. If we want to indicate the distance between my bed and my desk, we presumably use meters. While, if we want to indicate the distance between Pluto and the Sun, we plausibly use AUs. Finally, according to Carter and Steiner, measuring the extents of overall freedom “involves quantifying over all actions that are conceivable within the laws of physics, the test for inclusion being the question of whether

⁸⁴ In this context, consider also the distinction between act-types and act-tokens. An act-type is, for example, the action of visiting a museum today. An act-token, on the other hand, is a way of instantiating that act-type at one point in time, for instance by visiting a museum at 2pm, 2.01pm, 2.01pm and 1 second etc. Thus, the FUs would measure physical act-types and not physical act-tokens (Carter 1999 186-187).

we can speak meaningfully of the action in question being *physically prevented*⁸⁵ by the action of another person” (Carter & Steiner 2022, 252).

I shall disclose that I am here not so much interested in the plausibility of Carter’s theory of measurement as such.⁸⁶ Instead, I am more interested in the kind of judgments about freedom Carter’s approach, assuming its correctness, would allow us to make. Thus, for the purpose of this work, I simply grant that his account of measurement is plausible and that we can indeed measure overall freedom through the use of the FUs. I shall now turn to the judgments that, in theory, Carter’s approach allows us to make. There are three kinds of (interrelated) judgments which, I hold, are important in this context.

The first is that by using the FUs, we can compare singular freedoms regarding the physical extent of action they provide. For example, we are in principle able to compare the freedom of retrieving a letter from my letter box *a* to the freedom of me flying to New York *b*. We may say that the freedom of retrieving a letter from my letter box *a* involves three actions: leaving my house *x*, walking to the letter box *y*, and taking the letter out of the letter box *z*. Let us assume that *a* thereby yields 3 FUs.⁸⁷ *B* on the other hand, encompasses much more actions. Let us assume that it involves 100 actions. In consequence, let us suppose that *b* yields 100 FUs. Thus, *a* contributes less to our overall freedom than *b*, for *b* yields a higher extent of action than *a*.

The second is that Carter’s approach allows us to say by how much a set of actions is bigger than another. For example, where I have a set of compossible actions available to me which is (*w*, *x*, *y*, *z*) and you have a set of compossible actions which is (*x*, *y*, *z*), it is plausible to say that I am freer than you. But if we do not use units to make comparisons

⁸⁵ This is an important condition. Remember that to Carter freedom is essentially a social concept. Thus, if an earthquake changes the physical environment in which I am living this has no effect on the level of overall freedom I have. Unless, of course, the earthquake results in me becoming handicapped, or was somehow broad about by human action.

⁸⁶ For a criticism of Carter’s approach, see Shnayderman 2016, 2019 and Kramer 2003, 2022.

⁸⁷ For simplicity’s sake, I am assuming that every action has the same physical extension. In reality, the particular actions would yield different amounts of the freedom-units. Nothing in my argument turns on this fact, though.

about relative degrees of overall freedom, we can only say that your set is smaller than mine, because yours is a subset of mine, yet we cannot indicate precisely by how much. We could merely say that set w is missing as a member in your set of compossible actions, yet we would not know how much less overall freedom you have at your disposal because of it. Thus, employing Carter's approach instead we may find out that my set of actions yields 200 FUs, while your set yields only 100 FUs.

Based on this, the third is that Carter's theory enables us to make comparisons as to the relative degree of overall freedom where one of the two (or more) sets in question is not a subset of the other. Given that using Carter's approach we can determine precisely how many FUs are contained in every freedom, we are indeed in a position to compare two (or more) completely different sets of compossible freedoms. For example, let us assume that your set of compossible freedoms is $(a\ b\ c\ d)$ and mine is $(w\ x\ y\ z)$. If we do not indicate the amount of overall freedom in FUs, we are not in a position to say which of the two sets contributes more to overall freedom. This is the case because both sets have 4 members.⁸⁸ We would, thus, have to say that both sets instantiate the same amount of freedom, or more honestly that we have no idea how much freedom either of them yields comparatively.⁸⁹ Carter's approach, on the other hand, would enable us to assess the relative amounts of overall freedom provided by the two sets at hand.

In summation, Carter provides an approach for the measurement of overall freedom which (in theory) enables us to ascertain how much extent of action singular freedoms yield and based on this, how much extent of action entire sets of freedoms provide.

⁸⁸ Pattanaik and Xu call assessing freedom in this way "*simple cardinality-based ordering*" which "will rank any two sets only on the basis of the number of elements in each of the two sets, a bigger set being ranked higher than a smaller" (Pattanaik & Xu 1990 387).

⁸⁹ The same is of course applicable to the sets of impossible actions, i.e. the actions which a person is not free to perform. Remember that for Carter it is important to take both freedoms and unfreedoms into account. For the sake of simplicity, I am not dealing with unfreedoms here.

2. The Value of Overall Freedom

In section 2, I will explain how Carter's conception of overall freedom, based on the notion of the non-specific value of freedom, specifies why it is a good thing to have freedom as such. This is an important step in Carter's argument, for just because one can advance an intelligible notion of overall freedom, does not mean that it is important for people to have such freedom. I will argue that it is indeed possible to distinguish in a meaningful way between freedoms specific and non-specific value, which is the basis for attributing value to overall freedom. First, I will explain the difference between freedom's specific and non-specific value. Thereafter, I will devote most of this section to explicating in what sense exactly freedom has non-specific value.

2.1 Freedom's Specific and Non-Specific Value

In this section, I will contrast the value associated with having overall freedom and the value of having the freedom to do a specific thing. Building on Carter, I will make the point that we can meaningfully speak of freedom having both kinds of value.

Let us begin by explaining the value of a specific freedom. Specific freedoms are valuable because they allow us to do specific things on which we place importance because they serve values and ends other than freedom. From this perspective, particular freedoms are valuable *instrumentally* and with regard to *specific* ends. For instance, John Stuart Mill in *On Liberty* (2003 [1859]) made the point that freedom of speech is instrumentally valuable for the pursuit of truth:

“But the peculiar evil of silencing the expression of an opinion is, that it is robbing the human race; posterity as well as the existing generation; those who dissent from the opinion, still more than those who hold it. If the opinion is right, they are deprived of the opportunity of exchanging

error for truth: if wrong, they lose, what is almost as great a benefit, the clearer perception and livelier impression of truth, produced by its collision with error” (Mill 2003 [1859], 37).⁹⁰

The idea is that it is important for us to have freedom of speech because we have a strong interest in being free to speak our minds. According to Joel Feinberg, this form of value pertains to “the various interests we have in doing the things we may be free or unfree to do” (Feinberg 1978, 27), and importantly we shall add that these interests are not freedom itself but some other goal (such as, for example, human progress). In this sense, Carter has called this form of value “*nonindependent*” (Carter 1995).

Note, however, that the basis on which freedom’s specific value is ascribed can take different forms. For example, as Pattanaik and Xu argue, we can “consider the value of an individual’s freedom as assessed by the individual himself ([...] *self-assessment* of the value of freedom) or the value of an individual’s freedom as assessed by some other agent, such as an external evaluator, the community, and so on ([...] *external assessment* of the value of freedom)” (Pattanaik & Xu 2015, 364). Importantly, according to Pattanaik and Xu, “[t]he two types of assessment need not necessarily coincide” (Pattanaik & Xu 2015, 364). For example, the value of the freedom to dump one’s garbage at the nearby street corner might be assessed as being valuable by some individual who wants to get rid of his garbage. On the other hand, it stands to reason that the community disvalues that particular freedom, for its exercise would lead to dirtier cities.

A related basis for the evaluation of specific freedoms is the distinction between what Pietro Intropi calls the subjective and objective value of a specific freedom (Intropi 2019, 82).⁹¹ Mill, in the passage quoted earlier, appears to be appealing to the objective value of freedom of speech. Indeed, he seems to argue that freedom of speech has some general

⁹⁰ For a more recent argument on the value of freedom of speech, see Raz 1991.

⁹¹ On the distinction between subjective and objective value more generally, see Oddie & Menzies 1992.

benefits which we can objectively establish are good. In addition to that, a liberty's specific value can be conceived as subjective, purely based on the internal properties of an individual, not allowing such general statements. The distinction between subjective and objective value does not have to reduce to the distinction between self-assessed and externally assessed value. For example, assume that there is a community that generally disvalues freedom of speech, however that there is one member of it who values freedom of speech highly. Hence, in this case, the external assessment of the community would be that freedom of speech's value is negative. Contrariwise, the self-assessment of the one member would lead to freedom of speech being valuable. Thus, if we believe in freedom of speech having value in an objective sense, then we should say that the self-assessment of the individual is objectively correct and not the external assessment of the community.⁹²

At any rate, however we assess the value of particular freedoms, the value depends on an evaluation of the freedom's respective contents. Thus, the value of a specific freedom is always "content-dependent", which, according to Kramer, is "the value of a freedom with the particular content of the liberty-to-do-*X*" (Kramer 2003, 244).

Crucially, Carter argues that in addition to the specific value of freedom there is a different way in which freedom is valuable. This he terms the "non-specific" value of freedom, which, to Carter, captures the notion that "empirical freedom is *itself* one of the valuable things in life" (Carter 1999, 290). The idea is that freedom has independent value, i.e. has value "independently of the value we attach to the particular things it leaves us free to do" (Carter 1995, 825). Note, however, that Carter does not argue that because one holds that freedom is non-specifically valuable one must deny freedom's specific value. Carter writes: "My aim here is not to deny that freedom has specific value, but to argue that it also has non-specific value" (Carter 1999, 36). Therefore, Carter's point is that on top of the

⁹² It can, of course, be difficult to distinguish neatly between subjective and objective value as using this distinction depends on background moral theories. Therefore, what has objective value and what only has subjective value is necessarily contentious.

preference for having a certain specific freedom at one's avail, one can and should, have a preference for possessing freedom as such: "For to say that freedom is non-specifically valuable is to express a preference for the presence of options *tout court* (while not of course denying that some options are also preferable to others for *specific* reasons)" (Carter 1999, 128). The idea is, then, that this "non-specific" value of freedom can only be captured by a conception of overall freedom, i.e. a conception which describes freedom as such. In other words, because freedom is non-specifically valuable we need Carter's conception of overall freedom.

What exactly is the non-specific value of freedom that makes it necessary to conceive of physical freedom in an overall sense? Carter gives this explanation of the non-specific value of freedom:

"The 'non-specific value' of a freedom or set of freedoms is its value in terms of the good 'freedom'. If freedom is 'non-specifically valuable', then we attach value to our freedom not only because of the specific things it allows us to do, but also because of the mere fact of our having freedom. To say that freedom is non-specifically valuable is to say that it is valuable 'as such'" (Carter 1999, 33-34).

From Carter's point of view, there is something quite important about the mere fact that we have freedoms to do things in general, irrespective of the specific nature of these freedoms. Matthew Kramer has called this form of value "content-independent". Kramer writes: "not only are many of *P*'s particular freedoms valuable for *P* because of their specific contents, but in addition her overall liberty is valuable for her independently of any of those specific contents" (Kramer 2003, 429). Thus, the content-independent value is "the value of freedom as such, as instantiated in the liberty-to-do-X" (Kramer 2003, 244).

In summation, freedom has value independently, that is it has value of freedom *qua* being freedom (Carter 1995). This means that every freedom contributes to the non-specific

value of freedom, and this is so independently of the specific thing that freedom enables us to do.

2.2. The Value of Freedom as Such

In this section, I will explain what constitutes the non-specific value of freedom. Carter argues that freedom's non-specific value comes in at least two forms: non-specific instrumental and non-specific constitutive value.⁹³ I will also argue that the non-specific constitutive value of freedom helps defuse a problem associated with the non-specific instrumental value of freedom.

2.2.1 The Non-Specific Instrumental Value

In this section, I will explain the non-specific instrumental value of freedom. I will argue, however, that there is a problem associated with that notion.

According to Kramer, the non-specific instrumental value can be defined in the following way: "Freedom is instrumentally valuable in that it tends to promote certain other desiderata, and the instrumental value is content-independent [in Carter's terms "non-specific"] in that it is characteristic of anyone's overall liberty and not merely of some of her particular liberties" (Kramer 2017, 205, my insertion). According to Carter, then, "[w]hat explains the non-specific instrumental value of freedom is the *"unavoidability of human ignorance and fallibility"* (Carter 1999, 45). In this sense, we prefer a bigger option set S2 over its smaller subset S1 because "we are not *sure* about the values of the various options" (Carter 1999, 45). Carter distinguishes two ways in which freedom has non-specific

⁹³ Carter also discusses the idea of freedom as such having unconditional and intrinsic value. However, Carter does not believe that freedom has unconditional value, and he is of the opinion that for his arguments to stand, we do not have to believe in freedom having intrinsic value (see Carter 1999, chapter 2).

instrumental value: “(a) as a means to some social goal or (b) as a means to individual well-being” (Carter 1999, 45).⁹⁴

In arguing for overall freedom as a means for a social goal, Carter is drawing on thinkers such as John Stuart Mill and Friedrich Hayek. Hayek famously made an argument in *The Constitution of Liberty* (1978) for the necessity of freedom as such for societal progress:

“Liberty is essential in order to leave room for the unforeseeable and unpredictable; we want it because we have learned to expect from it the opportunity of realizing many of our aims. [...] Humiliating to human pride as it may be, we must recognize that the advance and even the preservation of civilization are dependent upon a maximum of opportunity for accidents to happen” (Hayek 1978, 29).

The gist of the argument is therefore “the *empirical generalization* that if there is more liberty, greater progress is likely to result” (Carter 1999, 46), which equates to the hypothesis that if freedom is around in society that is a good thing for society as a whole. While there is a degree of plausibility to this notion, in my opinion we should highlight that it remains an empirical generalization. Moreover, the emphasis in this argument for the value of freedom is on overall freedom being important for a *social* goal. While there is in principle nothing wrong with promoting a social goal, one may think it is more important to focus on goals that directly pertain to how individuals fare.

Carter argues also that overall freedom is a means to individual well-being. Pietro Intropi has called this “The Personal Good View” of freedom which states that people have an interest in overall freedom “insofar as freedom contributes to making their lives go well”

⁹⁴ Depending on whether one emphasizes the social goal or the individual well-being aspect, we may end up with different principles for the distribution of overall freedom. I am grateful to Ian Carter for a helpful discussion on this point.

(Intropi 2022, 4). The argument is analogous to the one for societal progress. We very much like our desires to be fulfilled in the moment, but we would also like to see our desires fulfilled in the future. Yet, we have to consider that our desires might change over time. Granted as much, more freedoms rather than less will make it more likely that our desires are met given that we have more opportunity for desire-satisfaction:

“Since we cannot be sure of our future desires or needs, we do not value freedom merely as one of the necessary means to our doing x , y , and z , but rather, as one of the means by which we may satisfy whatever our needs and desires may be. [...] [W]e can only be sure (or as sure as possible) of attaining the ends liberty serves by making sure that there is as much liberty as possible (at least *ceteris paribus*)” (Carter 1999, 51-52).

The argument is, as Kramer notes, that “the insurmountable finitude of our knowledge can lead us astray in our judgments about the content-dependent value of this or that particular freedom” (Kramer 2017, 206). That is why, as he says, “at least up to some very high level of overall liberty, we shall be more advantageously positioned to succeed in our projects if we enjoy more freedoms rather than fewer” (Kramer 2017, 206). According to Kramer, “[s]ince nobody at present can infallibly identify the particular freedoms that are most beneficial for us, our lives will generally go better if our combinations of conjunctively exercisable freedoms are plentiful rather than meager” (Kramer 2017, 206).⁹⁵

Take the following example to illustrate the point. Let us assume that a person P has the following option set: a going to the cinema, b going to the library, c going to a techno club. P at the moment does not have an interest in either listening to techno music or going to a club. Therefore, currently c does not have any specific value for P . However, at present c has non-specific value for P . The idea is that should P make up his mind at any point in

⁹⁵ Recall that where Kramer prefers to speak of “conjunctively exercisable freedoms”, Carter speaks of a “set of compossible actions”. The difference is merely semantic.

the future and develop a taste for clubbing to techno music, *P* will be able to indulge in his newly found desire. In other words, if *P* ever wants to go to a techno club, it is causally necessary for him to have that option at his disposal. Thus, it is a good thing for *P* to have that option at his disposal whether or not it can satisfy any of his current desires. Therefore, having more freedoms rather than less, *ceteris paribus*, enables not only currently actualized preferences to be more likely to be satisfied but also makes satisfaction more likely in the case of a change in preferences.⁹⁶ In that sense, we may say that we prefer larger sets of freedoms over smaller ones because the potential for specific value is higher where there are more freedoms rather than less.

This entails that it is not sufficient to ensure that people have a set of options at their disposal that is believed to consist of all the “meaningful” options one could possibly be interested in. In fact, Carter argues that the “idea that it is important for us to have options we see as meaningful represents a part of the truth about freedom’s value, but not the whole truth” (Carter 1999, 54). Indeed, according to Carter, we can never say with certainty which options will count as meaningful in the future. Therefore, freedom’s value cannot be described exhaustively by reference to single meaningful options. Carter writes:

“It is true [...] that freedom is instrumentally valuable as a means to performing meaningful actions. But part of this instrumental value is of a non-specific nature, given that we are unwarranted in ruling out any particular available actions as “non-meaningful”. The degree of instrumental value of a set of freedoms cannot therefore be assessed wholly by reference to the meaningfulness of the actions it makes available” (Carter 1999, 54).

⁹⁶ Ralf Bader suggested to me that one can make the claim that it is good to have an option at one’s disposal even if it cannot satisfy one of our current desires without invoking overall freedom and assigning non-specific value to it. The idea is that one can instead invoke the specific value of future desires, which can then be conditionalized or which can enter in expectational reasoning when there is uncertainty as to which desires one will have in the future.

Expressed differently, an option which at one point in time is considered meaningless may be considered meaningful at another point in time, and vice-versa. Thus, we have to take freedom's non-specific instrumental value seriously, and we should be concerned with having a degree of overall freedom.⁹⁷

One objection which can be leveled against this notion of ignorance is that surely there are some freedoms which are so detrimental to our or other people's well-being when exercised that there is little reason for having them. For instance, the freedom to kill oneself with poison seems to be a strong candidate for freedoms we do not need to have at our disposal. At least this is the case if we believe that the potential for specific value to which the non-specific value points can be established in some sense objectively. If we were to argue that the non-specific instrumental value of freedom is, in the end, reducible to specific subjective or self-assessed value, then, of course, every freedom is capable of being of value to a person. It appears to me, however, that by understanding the non-specific instrumental value also as a form of objective value, we cannot defuse the argument that some freedoms do not have the potential to be of value. Thus, while often the non-specific instrumental value of freedom will have some intuitive appeal like in the techno-club example, it seems this is not so in all cases.

In summation, while there is some intuitive plausibility for the non-specific instrumental value of freedom, it appears like some options are simply not capable of having specific value; at least, if we do not espouse a completely subjectivist understanding of specific value.

⁹⁷ In this context, Feinberg speaks of "hypothetical or *dispositional* liberty" (Feinberg 1973, 5-6) that would be restricted when opportunities are curtailed that one does not have the desire to exercise. The idea is that "possible desires" are being frustrated rather than actual ones. According to Feinberg, it is important to have hypothetical liberty even if we never change our desires: "[...] even if there is no chance that our desires will ever change, it is reassuring to know that there are always alternatives, just in case" (Feinberg 1973, 6).

2.2.2 The Non-Specific Constitutive Value

In this section, I will explain the non-specific constitutive value of freedom, and I will argue that this form of value helps overcome the problem associated with the non-specific instrumental value.

Carter argues that in addition to freedom having non-specific instrumental value, freedom also has “non-specific constitutive value”. Once again, the argument is that if we want to capture this form of value, we have to conceptualize freedom in terms of overall freedom. The idea is that constitutive value is weaker than intrinsic⁹⁸ value but stronger than instrumental value. Carter writes:

“As I shall define the expression, to say that freedom is ‘constitutively valuable’ is to say that freedom is a constitutive part of some other good, where this other good is itself intrinsically valuable. To say that freedom is constitutively valuable in this way is to say something stronger than that freedom is merely instrumentally valuable, yet weaker than that freedom is intrinsically valuable. It is to say that freedom is a necessary condition for some other good in an analytical rather than a causal sense” (Carter 1999, 36).

The argument is that “freedom is not intrinsically valuable, but nevertheless forms a *constitutive part* of some intrinsically valuable thing” (Carter 1999, 54). The idea is that overall freedom “is part of the *definition*” of the thing that is intrinsically valuable (Carter 1999, 55). The claim is that overall freedom is a constitutive part of valuable things such as agency and autonomy.

Indeed, to Carter, by enabling people to choose from more options rather than less, they are in a position to say “no” to the options they do not want to exercise, which places weight on their quality as an agent. The idea is that saying someone is an agent presupposes

⁹⁸ On the meaning of intrinsic value, see Moore 1922.

that that agent can make choices.⁹⁹ Making choices, in turn, is only possible if people have a certain degree of overall freedom. Thus, to Carter, overall freedom is part of the definition of agency. In Carter’s words: “the more freedom we have, the greater the sense in which we can be called agents, and thus responsible for what we do, because the greater the number of times that we can say ‘no’” (Carter 1999, 58).¹⁰⁰

Making the case for overall freedom being a constitutive part of autonomy, Kramer argues that “[a]n autonomous person gains and retains her status as such not only by arriving at most of her decisions in a reasonably reflective manner that bespeaks her self-determination, but also by having been free to behave in any number of ways that are contrary to the ways in which she actually behaves” (Kramer 2003, 431). This means that “[i]n so far as the options open to a person have been tightly constricted, she has lacked the room necessary for achieving and exhibiting full-fledged autonomy” (Kramer 2003, 431). This is the case, according to Kramer, because there is an “affirmative” as well as a “declinatory” aspect to autonomy. According to Kramer, autonomy is characterized by an agent “whose will is impressed upon the world through her abstaining from numerous paths as well as through her pursuing certain paths” (Kramer 2017, 207). Therefore, Kramer follows, “the exercise of any genuinely autonomous agency consists in abundant refusals – whether they be explicit or implicit – as well as in affirmative choices made on the basis of reasons that have been contemplated with due care” (Kramer 2017, 207).¹⁰¹

Returning to the objection earlier, the option of drinking poison if actualized certainly is detrimental to individuals’ well-being; however, leaving this option open to people enables them to say “no” to it and thus to make a conscious choice as responsible agents. This, then, entails that, as Kramer notes, “one’s autonomy will generally be bolstered through one’s

⁹⁹ See also Hurka 1987.

¹⁰⁰ This argument can be associated with what Intropi has called the “The Status View” of the value of freedom since the reason why we believe it is bad for people to be interfered with is because we believe that people should be accorded a status as agents who are capable of making their own choices (Intropi 2022, 9).

¹⁰¹ Note that Kramer defines autonomy as a kind of agency here.

possession of the freedom to commit suicide in this or that manner, even though the exercise of such a freedom would scarcely sustain one's autonomy" (Kramer 2003, 433). Thus, according to Kramer, we have to distinguish between "the value of one's ϕ -ing and the value of one's freedom to ϕ " (Kramer 2017, 200). While the value of committing suicide is negative, the value of being free to commit suicide is not. In fact, according to Kramer, if we were to remove such an option from a person "in order to prevent her from availing herself of it would be to evince a lack of trust in her inclination to arrive at suitable decisions on the matter" (Kramer 2017, 201).¹⁰² Thus, even though the non-specific instrumental value cannot establish the general presumption that we should prefer more overall freedom over a lesser amount of it, the non-specific constitutive value can: having freedoms available to us whose specific value is negative, enables us to exercise the declinatory aspect of our autonomy.¹⁰³

In discussing the relationship between autonomy and overall freedom, in *La libertà eguale* (2005), Carter builds on the Kantian notion of autonomy. Carter argues that one of the reasons why liberals believe that we should respect people's freedom is because of "the Kantian prescription according to which people must be treated 'as ends in themselves'" (Carter 2005, 140; my translation). Kant famously gave the following stipulation in the *Groundwork of the Metaphysics of Morals*: "For, all rational beings stand under the law that each of them is to treat himself and all others *never merely as means* but always *at the same time as ends in themselves*" (Kant 1998 [1785], 4:433). Building on Joseph Raz, Carter

¹⁰² Following this logic, Carter and Kramer argue that "[i]n thinking about the values of freedoms, we need a tripartite classification rather than a dichotomy: (1) the non-specific (content-independent) value of any freedom-to- ϕ ; (2) the specific (content-dependent) value of any freedom-to- ϕ ; and (3) the value of ϕ -ing" (Carter & Kramer 2008, 93).

¹⁰³ In consequence, the argument entails that choiceworthiness is not a necessary condition for an option to contribute to people's autonomy. Indeed, the idea is that what contributes to people's autonomy by enabling the exercise of the declinatory aspect of autonomy is an option's lack of choiceworthiness. There is, however, a problem with the argument, namely that the lack of choiceworthiness is a function of the specific disvalue of the options at hand. Thus, the argument explains why options that have specific disvalue can enhance people's autonomy but fails to support the notion that it is good to have more freedoms rather than less irrespective of their content. I am grateful to Ralf Bader for making this point plain to me.

interprets the Kantian maxim to treat people as ends in themselves as signifying that people ought to be treated “as ‘points of origin of ends’ or ‘originators of ends’ or ‘beings which stipulate ends’” (Carter 2005, 142; my translation).¹⁰⁴

The idea is that given that one of the most fundamental norms of liberal thought is to treat people as ends in themselves, i.e. as beings which stipulate their own ends, people are in need of having a certain measure of overall freedom in order to be able to make those stipulations characteristic of their nature as autonomous beings.¹⁰⁵ In fact, according to Carter, providing people only with specific freedoms because they are important for the pursuit of certain highly valuable ends is a violation of the “antipaternalist” or “libertarian” spirit of the Kantian imperative which intends for people to make up their own minds as to which ends to pursue. Carter writes: “A normative liberal theory should avoid making reference to the ends of people – even if they are defined in vague terms and through democratic procedures – because only in this way can it qualify as a theory which treats people as points of origin of ends” (Carter 2005, 205; my translation).¹⁰⁶

In summation, as we have seen, it is indeed possible to give a convincing account of why overall freedom can be understood as being a valuable good. We have seen that it makes sense to speak of overall freedom having non-specific instrumental as well as non-specific constitutive value, and that the second kind of value aids in defusing the problem associated with the first. Indeed, by relying on the idea of the non-specific constitutive value, we are in

¹⁰⁴ On the face of it, Carter’s notion of human beings as “points of origin of ends” has similarities with Rawls’s notion of citizens “regard[ing] themselves as self-authenticating sources of valid claims” (Rawls 2001, 23). Thus, it can be illuminating to dive more deeply into the authors’ respective conceptions of a free person. I am grateful to Alexa Zellentin for bringing this to my attention. Unfortunately, space precludes my expanding upon it here.

¹⁰⁵ Similar to the autonomy-argument is Carter’s argument that relates overall freedom to an attitude of respect. Carter writes: “Given that the attitude of respect involves recognition of persons’ capacity to make choices, it is reasonable to define respectful conduct as conduct that involves abstaining from performing actions that *direct the choices* of others, that is, actions that aim to affect the content of others’ wills by means of changes in the array of options open to them” (Carter 2009A, 175). Thus, *ceteris paribus*, reducing people’s degrees of overall freedom is incompatible with showing them respect.

¹⁰⁶ I hold that this is not the entirety of the story. Surely, there are certain important liberties which need to be single out because of the value they promote.

a position to argue that it is good to have more freedom rather than less, even if within our set of freedoms there are some freedoms which have a negative specific instrumental value.

3. A Functionalist Framework for Conceptual Analysis

Now that Carter's arguments for overall freedom are clear, I will analyze the workings of the conception. I propose to do so by expanding on a framework for the analysis of conceptions of freedom developed by Keith Dowding and Martin van Hees (2007). In this section, I will argue that a conception of freedom can be deemed an appropriate one if it can complete successfully three tasks: *The Linguistic Task* (Task I), *The Value Task* (Task II), and *The Determination Task* (Task III).

How exactly does a conception of freedom work? In the last two chapters, we have encountered implicit assumptions about what constitutes a proper conception of freedom. For instance, it is by appealing to linguistic intuitions, that Cohen criticized Nozick, arguing that the latter's conception of freedom offends the common use of the term "free" (Cohen 2011, 153). Moreover, by appealing to the value of freedom, Carter argues that freedom has an independent value not reflected in justice-based conceptions of freedom, which leads him to conclude that there is something wrong with such conceptions of freedom (Carter 1999, 68-74). Appealing to the context in which the concept of freedom ought to be used, Rawls argued that his conception of *justice as fairness* ought to serve as a blueprint for society, and that in that blueprint the basic liberties should have a prominent place, claiming that freedom as such could not play a substantial role in that endeavor (Rawls 1982; 1993, chapter 7). What is clear from these different arguments about conceptions of freedom and their appropriateness is that we can assess conceptions of freedom through different lenses. However, what exactly can we take as criteria for analyzing the plausibility of different conceptions of freedom?

Dowding and Van Hees argue that there are different kinds of reasons for adopting a specific conception of freedom and rejecting rival ones. In their paper “Counterfactual Success and Negative Freedom” (2007)¹⁰⁷, Dowding and Van Hees propose three criteria¹⁰⁸ for the conceptual analysis of freedom, which provides a suitable methodological framework for the analysis of Carter’s conception of freedom.

The first criterion that Dowding and Van Hees put forward is *semantic* and holds that “we should strive to use a conception of freedom that accords with our everyday usage of the term” (Dowding & Van Hees 2007, 148). Generally speaking, terms can be defined in different ways. However, given our common use of them, some ways of defining these terms are more plausible than others. For instance, nothing prevents us from defining “freedom” as designating the amount of knowledge an individual possesses. However, this seems to be at odds with the way we usually employ the term. Thus, when constructing a conception of freedom, we should make sure that our definition has some root in ordinary language. Despite all that, Dowding and Van Hees argue that this “semantic criterion is of only limited importance for the analysis of freedom” (Dowding & Van Hees 2007, 148). Their reasoning is that “there are so many conflicting intuitions about the nature of freedom that it is often not clear which, if any, of our semantic intuitions should be taken to be authoritative” (Dowding & Van Hees 2007, 148).

The second criterion which Dowding and Van Hees put forward is the *normative* criterion whose “underlying idea is that having freedom is, at least *prima facie*, valuable” (Dowding & Van Hees 2007, 148). They argue that a “convincing conception should therefore enable us to explain why *that* kind of freedom is thought to be valuable” (Dowding

¹⁰⁷ In this paper, the authors apply their three-pronged criteria to reject pure conceptions of negative freedom such as the one espoused by Ian Carter. Ultimately, Dowding and Van Hees, contra Carter, argue for a negative conception of freedom which is intentions-based. I will not get into the specifics of their criticism here, as I am mainly interested in their proposed methodology for analyzing conceptions of freedom. For a reply to Dowding and Van Hees’s paper, see Carter & Kramer 2008.

¹⁰⁸ The three criteria are not wholly distinct. However, each criterion points towards an important aspect of a conception of freedom.

& Van Hees 2007, 148). In this context, the two authors refer to Isaiah Berlin who argued (after initial endorsement of that notion) against defining negative freedom “as the ability to do what one wishes” (Dowding & Van Hees 2007, 149). Indeed, it is a well-known problem of the desire-based notion of freedom that this makes it logically possible for a person to liberate herself by extinguishing her unfulfilled desires. This is usually perceived as being an undesirable conclusion to be drawn from a conception of freedom. For example, a prisoner who is falsely imprisoned for life may reduce his suffering by simply renouncing all the desires which transcend the limited things he can do in prison. However, some people would argue that having that kind of freedom, achieved through renouncing desires, is not particularly valuable, or at least that there are kinds of freedoms which have a superior value (for example actually attaining the physical opportunity to leave the prison for good).

The third criterion which Dowding and Van Hees develop is what they call the *methodological* criterion. The idea is that “there should be a proper fit between the conception of freedom one uses and the research questions being addressed” (Dowding & Van Hees 2007, 149). For instance, according to the authors, “when philosophers discuss the possible existence of freedom in a determinist world, it is not appropriate to equate freedom with, say, civil liberties” (Dowding & Van Hees 2007, 149). Put differently, what this criterion stipulates is “that a conception of freedom should be appropriate for the context in which one uses it” (Dowding & Van Hees 2007, 159).

Now, what I will do with Dowding and Van Hees’s criteria is to expand it and then use it to scrutinize Carter’s conception of overall freedom. In doing so, I am proposing to shift the perspective from using the criteria as possible dimensions for the analysis of conceptions of freedom to regarding them as three interdependent tasks which a conception of freedom ought to complete in order to serve as adequate tools for normative theorizing. I call the three tasks *The Linguistic Task*, *The Value Task*, and *The Determination Task*.

Task I (*The Linguistic Task*) is that a conception of freedom needs to define what freedom is more or less in keeping with the way we use the term “free” in ordinary language. When it comes to Task I, there are three things to keep in mind.

Firstly, I view the requirement in a minimal sense. This means that the philosophical analysis of a conception of freedom should begin with ordinary language but must not stop there. Indeed, as John Langshaw Austin argued in “A Plea for Excuses” (1956), in philosophical analysis “ordinary language is not the last word: in principle it can everywhere be supplemented and improved upon and superseded” (Austin 1956, 11). However, despite that, Austin urged us to remember that in philosophical analysis ordinary language “is the first word” (Austin 1956, 11). This means that if a conception produces judgments which are utterly in conflict with how we usually use the term “free”, then this is a good reason to reformulate the conception.¹⁰⁹ The conclusion is therefore that it is important for a conception of freedom to have roots in ordinary language, yet we certainly must not go so far as to require that conceptual analysis deal with nothing other than ordinary language. In fact, often philosophical analysis of a conception will lead us far beyond the way we ordinarily employ that conception in our everyday affairs.

Secondly, relying on ordinary language might lead to what I here call “philosophical stalemate”. I have talked about that kind of stalemate in Chapter II where I reconstructed Cohen’s criticism of Nozick. In Nozick, as we have seen, the distribution of private property as such has no bearing on people’s freedom (Nozick 1974, 151). Under Cohen’s conception of freedom, it does (Cohen 2011, 152). We might, then, say that Nozick’s conception of freedom relies on the ordinary language intuition that we are only free to do something when it is permitted to us by a certain moral code (in Nozick’s case his entitlement theory of justice). In that sense, when I steal legitimately acquired property from you, I have not acted

¹⁰⁹ For instance, it is linguistically highly counterintuitive to call the movement of water political behavior.

in accordance with what I am free to do. Instead, we shall say it was an act of license, and my act has not enhanced my freedom in any way.¹¹⁰ Against this view ascribed to Nozick, Cohen argues that a restriction, whether it is justified or not, always reduces people's freedom, while the absence of restrictions always increases people's freedom (Cohen 1995, 59). Thus, Cohen would say that my stealing your property actually has redistributed the amount of freedom we had. I have more now, while you have less. If in such a philosophical debate each of us insists on holding on to their respective intuitions about freedom we are at risk of reaching a philosophical stalemate, whereby relying on ordinary language alone no progress can be made.¹¹¹

Thirdly, what matters here is consistency. I may build a conception of freedom on as many linguistic intuitions as I fancy, but they need to be consistent with each other. I cannot construct a consistent conception of freedom if the underlying linguistic intuitions are mutually exclusive. In ordinary speech I might say that my brother's permission to choose either of his two cars, left me at liberty to take either implying a deontic way of speaking about freedom; while in the next sentence, I criticize our current society because of the unequal freedom between the super-rich and the homeless using an empirical way of speaking about freedom. However, as we have seen in Chapter II, these linguistic intuitions about freedom and permissions, and freedom and financial means are conceptually distinct. Thus, one conception of freedom cannot consistently be in keeping with both. This, of course, does not mean that we cannot employ two different conceptions of freedom that are based on rivaling linguistic intuitions.

¹¹⁰ On the contrary, my acting license will change my moral status, which has an effect on what permissions I have afterwards. This point will reappear in section 1 of Chapter IV.

¹¹¹ This may also lead to endlessly pointing to more and more linguistic intuitions with which the other's conception of freedom is inconsistent. Such "philosophical whataboutism" may prevent us from ever bringing to an end the discussion on the conceptualization of freedom. In fact, to my mind, much of the debate on what is the "proper" way to conceptualize a conception of freedom seems to be conducted in such a way.

All in all, my point is that fulfilling *The Linguistic Task* is a necessary condition for an adequate conception of freedom, yet there are other tasks that a plausible conception of freedom needs to fulfill. Not successfully completing Task I renders defective a conception of freedom, yet completing Task I successfully does not thereby establish that the conception is adequate overall. Hence, once Task I is completed, an adequate conception of freedom still needs to fulfill Task II and Task III.

In order to fulfill Task II (*The Value Task*), a conception of freedom needs to explain clearly why freedom thus conceived is a valuable thing and how the assessment of value works employing that conception of freedom. What appears important here are two things.

The first is to provide an answer to the question as to what kind of value that particular freedom is assumed to have. Does that kind of freedom have intrinsic value or extrinsic value? According to Rønnow-Rasmussen, the notion of intrinsic value “has been glossed variously as what is *valuable for its own sake, in itself, on its own, in its own right, as an end, or as such*” (Rønnow-Rasmussen 2015, 29). In contrast to this, according to Rønnow-Rasmussen, the notion of extrinsic value “has been characterized mainly as what is valuable as a means, or for something else’s sake” (Rønnow-Rasmussen 2015, 29). In this context, some such as Olson have also spoken of final and nonfinal value, whereby final value indicates “the value something has for its own sake” (Olson 2004, 31), and nonfinal is the value that a thing may have for the sake of something else.¹¹² Much ink has been spilled on what the right categories to use are in this context. However, what is important for me here is simply that if we suppose that something is of value, we should explain where the value of that thing comes from. Speaking loosely, is the value located in the valuable thing itself or is the thing valuable because it promotes another thing that is valuable? Given that

¹¹² Note, however, that there is a debate in contemporary axiology as to whether final value must always supervene on the intrinsic properties of the thing that has final value. Olson, for example, believes that final value can supervene both on intrinsic features of the thing that has final value and on that thing’s non-intrinsic features. Thus, according to Olson’s argument, intrinsic value is a subcategory of final value (Olson 2004, 33). Nothing in my argument turns on this discussion though. So, I will not take a stance on it.

we believe that freedom is valuable, the various conceptions of freedom should have a story about this.

The second thing to note here is the way in which a conception of freedom makes value assessments. Is the assessment of value based on the specific value or the non-specific value of freedom? In other words, is the content in terms of the specific ends that the option allows us to pursue what counts, or is it the fact that the option instantiates more or less overall freedom? Is the value based on an objective or subjective understanding of value? Moreover, who assesses the value? Further, is the value connected to the exercise of options or to their mere presence? There are, thus, different ways in which the value of freedoms (and sets of freedoms) can be assessed, and some freedoms will be more important than others.

All in all, to complete Task II, a conception of freedom ought to indicate clearly why that kind of freedom is valuable, and it should specify the way in which it ascribes value to different freedoms.

However, we cannot be satisfied with the completion of Task I and II alone. A conception of freedom must also be applicable to the intended context of its use, which to us here is the purpose of defining what social justice requires. To fulfill Task III (*The Determination Task*), then, a conception of freedom needs to aid in painting a plausible picture about justice. There are two things worth unpacking here.

Firstly, there are many conceptions of freedom which appear to complete Task I and Task II successfully. For instance, in the early 15th century work *The Imitation of Christ* (2015 [1418]), À Kempis put forward an account of what freedom comes down to from a Christian perspective and why we should attempt to achieve that kind of freedom. According to *The Imitation of Christ*, freedom is attained by subduing one's lower appetites and directing our will towards the fulfillment of the commandments of God. According to À Kempis, if we focus on exercising that freedom we can ensure eternal life in the Kingdom

of God. We may say, for the sake of argument, that his conception of freedom completes Task I by building his specification of freedom on ordinary language intuitions surrounding the notion of self-mastery.¹¹³ Moreover, we may argue that À Kempis's conception of freedom completes Task II by specifying why freedom is valuable (i.e. to achieve eternal life) and by providing a way of assessing different options (i.e. only options in keeping with God's commandments are valuable to pursue). Should we, then, regard À Kempis's conception of freedom as a possible contender for the purpose of establishing what social justice requires? I maintain it is evident we should not. Thus, there are conceptions of freedom which seem adequate for the purpose of defining what social justice is and those which seem not.

Secondly, the basic assumption of Task III is that, as Freeden notes, "concepts can constitute theories" and that "theory is to concepts what language is to words: an organizer, a regulator, a set of rules and uniformities, a grammar, a system" (Freeden 1996, 48). Thus, concepts (and conceptions) are building blocks of theories.¹¹⁴ Moreover, with Stemplowska, we can "think of theories as devices that are supposed to allow us to progress from one set of statements towards another set of statements in order to increase our knowledge about some X" (Stemplowska 2008, 323). Expressed differently, one set of statements serves as input into theories, while the other serves as output. My point is that concepts can be regarded as such inputs of theories. These inputs determine what the output of the theories is. More specifically, what we are here concerned with are conceptions of freedom as input, and a reasonable description of what social justice requires as output. This can be regarded as a functionalist approach to the analysis of conceptions of freedom.¹¹⁵ The idea is that

¹¹³ A root in common language for freedom as self-mastery might be found in expressions such as "He is a slave to his desires!"

¹¹⁴ In line with general discourse, I regard conceptions as specifications of concepts. On the distinction between concepts and conceptions, see Rawls 1999, 9.

¹¹⁵ The idea of a functionalist approach to the analysis of conceptions of freedom is similar to an approach put forward by Southwood 2022. Note however that Southwood proposes a functionalist approach to the analysis of notion of feasibility, not to conceptions of freedom. Moreover, Southwood is concerned with "our talk and thought about what feasibility is" (Southwood 2022, 124). In this endeavor, Southwood is focused on what it

conceptions of freedom play a fundamental role in determining what social justice is by being the basis of the principles of justice. Conceptions, then, should be evaluated with that aim in mind. Therefore, an adequate conception of freedom should allow us to paint a picture about justice that is plausible to us.¹¹⁶

In Rawls, we can clearly see how this works. The first principle of justice, which is the equal basic liberties principle (Rawls 2001, 42), is based on Rawls's justice-based conception of freedom. As we have seen in Chapter I, for Rawls one is free to do something if one is permitted to do that thing and others have a legal duty to abstain from interference (Rawls 1999, 177-178). Rawls then stipulates, as we have seen, that the basic liberties are to be enjoyed equally by everyone (Rawls 2001, 43). Leaving aside the fair-value aspect for the moment, this is the heart of the first principle. Consequently, Rawls uses his justice-based conception as the basis for the specification of the first principle. In that sense, his conception of freedom serves as input for his theory of justice. The principle is, of course, more than the conception of freedom. Indeed, the first principle stipulates that the basic liberties have to be enjoyed equally. Moreover, Rawls was aware of the fact that the basic liberties need to be adjusted so as to produce a "coherent scheme" of basic liberties. In this context, he speaks of adjusting the scheme of basic liberties and determining the "effective scope" of them (Rawls 1993, 331-333). Thus, Rawls first principle is in need of rules establishing how this is to be done. These are manifestly not contained in the conception itself. Nonetheless, the conception of freedom is the basis of the first principle since it determines what the central rights and duties are which justice is to distribute.

is we are claiming when we say that something is feasible or infeasible. In demarcation, I am here concerned not so much about individual claims about justice and freedom but rather to what degree a conception of freedom can help us in determining what social justice requires. I am thankful to Brian Carrey who pointed me toward Southwood's work.

¹¹⁶ Note that my focus here is primarily on what Rawls would call the "ideal part" of a theory of justice which is concerned with determining "the conception of a perfectly just basic structure and the corresponding duties and obligations of persons under the fixed constraints of human life" (Rawls 1999, 216). Thus, I am not preoccupied with the nonideal part of a theory of justice which aims at specifying what the principles of justice would be under what Rawls calls "less happy conditions" (Rawls 1999, 216).

All in all, for my purposes here, it is important that a conception of freedom be able to paint a plausible picture about justice (Task III). While a framework for the analysis of conceptions of freedom can set the context differently to the way I have done here, conceptions of freedom should generally be analyzed with respect to their ability of being valuable tools in a given context.

In summation, in section 3 I argued that a plausible conception of freedom should be able to complete three tasks successfully. I termed them *The Linguistic Task*, *The Value Task*, and *The Determination Task*. These tasks can be regarded as interconnected stages in constructing plausible conceptions of freedom.

4. Analyzing Overall Freedom

In section 4, I will demonstrate how Carter's conception of overall freedom deals with the three tasks I have just described. I will make the point that Carter's conception of freedom completes successfully Task I and Task II. However, I will argue that whether or not Task III is completed successfully needs to be established through further analysis.

4.1 The Linguistic Task

In this section, I will outline the linguistic intuitions that lie at the heart of overall freedom.¹¹⁷ As mentioned before, there are many linguistic intuitions on which a conception of freedom can be built. Here I will argue that there are four crucial linguistic intuitions on which overall freedom primarily rests.¹¹⁸

¹¹⁷ Note, however, that I am not here claiming that in developing his conception of freedom Carter did so by following the methodology outlined. Instead, I use the method of analyzing Carter's conception of freedom.

¹¹⁸ I am not arguing that these linguistic intuitions are all the intuitions on which overall freedom is built. Instead, I am arguing that these four are particularly helpful in understanding how overall freedom functions as a conception.

The *first* linguistic intuition we have already discussed in much detail in Chapter II. Thus, my remarks on it will be brief. This intuition is that restrictions always constitute a reduction of liberty. In that sense, Carter writes that “[a]ccording to most people’s linguistic intuitions, there are just restrictions of liberty and unjust restrictions of liberty” (Carter 1999, 70). This entails that any option, no matter the content, contributes to people’s freedom. The same linguistic intuition can be found, as we have seen in Gerald Cohen (1995, 55), but also in Felix Oppenheim (1985, 306), and Hillel Steiner (1994, 7). According to these authors, this intuition prompts us to view freedom as an empirical concept. Building on this intuition, to Carter, freedom is supposed to be understood as a value-free concept, i.e. as a concept through which we can establish in an objective manner whether a person is free to do a certain thing or not. Hence, according to Carter “the concept of freedom is best understood as picking out empirical features of the world directly” (Carter 2015, 293-294).¹¹⁹ Saying that somebody is free to do a certain thing, then, does not entail a moral endorsement of that empirical state.¹²⁰

The *second* linguistic intuition is that freedom is used as a social concept. The idea is that when we use the term “free” we are referring to a state of affairs existing between people. Relying on this intuition, Isaiah Berlin thought it crucial to make a clear distinction between unfreedom and inability. Berlin argued that even if I find myself unable to “understand the darker pages of Hegel, it would be eccentric to say that I am to that degree enslaved or coerced” (Berlin 2002, 169). In the same fashion, David Miller argues that “[w]e use the notion of freedom, however, in the subclass of cases where the presence of an obstacle can be attributed to the action of another human being or beings, and we do so in

¹¹⁹ In this paper, Carter provides a definition of “value-freeness” and highlights its difference to “value-neutrality”, as well as “value-independence”. Carter believes that “[w]e need value-free concepts because our ethical reason-giving must eventually pass in a manageable way from the ethical realm to the empirical realm it [sic!] is to affect how we view, and participate in, ethical and political events and states of affairs” (Carter 2015, 304; my insertion).

¹²⁰ Despite that, Carter, as we have established, believes that having more freedom rather than less is, *ceteris paribus*, a good thing, at least up to a certain threshold (Carter 1995, 1999, chapter 2).

order to draw attention to that fact” (Miller 2006, 185). According to Carter (together with Steiner), “[i]t follows from this social conception of unfreedom that a person can be unable to do x without being unfree to do x. Inabilities that have natural causes or that are self-inflicted do not amount to cases of social unfreedom” (Carter & Steiner 2022, 241).¹²¹ For example, to this view, it would be counterintuitive to say that my inability to run a mile in under 4 minutes renders me unfree to do so.

The *third* linguistic intuition is that the term “free” is used bivalently in ordinary speech. “Bivalent” means, as Carter argues, that “[w]ith respect to an action, an agent is either completely free or completely unfree to perform it” (Carter 2005, 62; my translation). More specifically, according to Carter and Steiner, “[o]n a *bivalent* approach to social freedom, of the sort endorsed by Isaiah Berlin and Hillel Steiner, unfreedom is defined as the presence of [...] preventive actions on the part of others, and freedom is then defined simply as the *absence of unfreedom*” (Carter & Steiner 2022, 241).¹²² In other words, if I say that you are not unfree to perform a certain action, this implies that you are free to do it. There is no third condition necessary for you to be free. For example, if I know that you are not unfree to run a mile in under 4 minutes because I know that no person would interfere with you should you attempt to do so. The idea is that I can readily infer from that fact your freedom to run a mile in under 4 minutes.¹²³

¹²¹ For a conception that asserts that ability is relevant for the existence of freedom, see Matthew Kramer’s *The Quality of Freedom* (2003).

¹²² On the matter, see also Steiner 2001.

¹²³ For an opposing, trivalent view, see Matthew Kramer (2003, 2017, 2022). Kramer would argue that you are only free to run a mile in under 4 minutes, if you are able to do so. Hence to Kramer, “[a] person is free to ϕ if and only if he is able to ϕ ” (Kramer 2017, 195). A person is unfree, then, if and only if “he would be able to ϕ in the absence of the second of these conditions; and (2) irrespective of whether he actually endeavors to ϕ , he is directly or indirectly prevented from ϕ -ing by some action(s) or some disposition(s)-to-perform-some-action(s) on the part of some other person(s)” (Kramer 2017, 195). In that sense, to Kramer a person can be “neither free nor unfree” to run a mile under 4 minutes if that person lacks the ability to do so while at the same time being free from interference by other people (Kramer 2003, 360). Moreover, as we have seen, also Ralf Bader has advanced a trivalent view on freedom (Bader 2018A, 2018B), and, based on Bader’s work, I explicated a trivalent view of justice-based conceptions of freedom.

The *fourth* linguistic intuition, which takes center stage in Carter's seminal *A Measure of Freedom* (1999), is that we often make what Carter calls "common-sense comparisons" about freedom. As common-sense comparisons Carter refers to claims such as "'the British are now freer than the Chinese'; 'the average American is less free than the average Swede'; 'Nelson Mandela has much more freedom now [1999] than he had fifteen years ago'" (Carter 1999, 17-18; my insertion). These common-sense comparisons can be applied to groups or individuals, and crucially, to Carter, they demand of us that we are able to measure freedom. According to Carter, these common-sense comparisons assume that we can conceive of freedom as a quantitative attribute, i.e. an attribute which is "not merely possessed or lacked but, rather, possessed or lacked *to a certain degree*" (Carter 1999, 3).

Carter is not the first one to use common-sense comparisons. In fact, Carter claims that the "idea of 'more' and 'less' freedom is indeed an ineradicable part of liberal discourse and theorizing" (Carter 1999, 4). In this context, Carter references, for example, Thomas Hobbes who in *Leviathan* (1998 [1651]) famously stated that "liberty is in some places more, and in some less; and in some times more, in other times less, according as they that have the sovereignty shall think most convenient" (Hobbes 1998 [1651], 146). To Carter, the important thing to note is that in political philosophy (but also in public discourse more generally) we hold it "important to be able to say *how free* an individual or society is – sometimes absolutely, sometimes comparatively, but nearly always in an 'overall' or 'on-balance' sense" (Carter 1999, 3). This leads him to assert that it is crucial to us to make sense of people having varying degrees of freedom.

In summation, these four linguistic intuitions ground overall freedom in ordinary language and lead Carter to understand freedom as an empirical, social, bivalent, and quantifiable concept.

4.2 The Value Task

In this section, I will argue that Carter puts forward a plausible way of thinking about the value of freedom. As regards the source of the value of freedom as such, I will argue that freedom as such must not be understood as being intrinsically valuable in order for Carter's argument of the non-specific value to be convincing. The main focus will be, however, on the way Carter's conception of freedom assesses the value associated with different options. I will make the point that Carter's conception of freedom has a specific way of ranking options.

As we have seen in section 2, Carter has put forward an account that attempts to explain why freedom as such is valuable. There are two arguments: one for the non-specific instrumental value and one for the non-specific constitutive value of freedom. Given that Carter's argument for both forms of value has already been discussed, I will limit myself here to pointing towards the fact that in order to buy Carter's argument, we do not need to believe in the intrinsic value of freedom as such. Both arguments that Carter develops for the value of freedom as such point towards the extrinsic value of freedom. If we take for instance G.E. Moore's view on what intrinsic value means, Carter's account of the value of freedom as such clearly does not fit the bill. Moore famously argued that the intrinsic value of a thing "*depends solely on the intrinsic nature of the thing in question*" (Moore 1922, 260). This is manifestly not the case in Carter's argument. The instrumental form of the non-specific value depends on causal connection between overall freedom and certain freedom-independent desiderata such as well-being and societal progress. Similarly, in the case of the non-specific constitutive value of freedom, it is not freedom that is the property which is intrinsically valuable. Instead, it is autonomy (and agency) which is intrinsically valuable, and freedom as such is conceptually a part of autonomy (Carter 1999, 55; 60). Thus, what the promotion of freedom as such is actually about is the promotion of the aforementioned freedom-independent desiderata and people's autonomy. Depending on how much freedom

is necessary for these other properties, we have a reason for promoting or securing a certain level of freedom as such.

I argued that a conception of freedom should produce rankings of different options. Indeed, building on Pattanaik and Xu (2015), I maintained that, based on the way conceptions of freedom make value assessments, options can be ranked in different ways. How exactly, then, does overall freedom rank different options (or sets of options)?

Recall that as we have established freedom does not “just gain value from its content as the freedom specifically to do x or y or z , which would depend on the other values that x or y or z ” (Carter 2021, 133). On top of that form of specific value, according to Carter, “freedom is also valuable independently of those other values” (Carter 2021, 133). Carter follows that “[i]f a particular set of freedoms has value not just in terms of those other values, but simply as freedom, then the value of that set must be a function not just of the value of the freedom specifically to do one thing rather than another, but also of ‘*how much freedom*’ that set contains” (Carter 2021, 133; my emphasis). Putting it this way, Carter suggests what I have established (see section 1.4), namely that sets of freedoms can differ with regard to how much freedom they instantiate. Moreover, Carter also suggests here that the non-specific value emanates from how much freedom a set of freedoms contains. Thus, the non-specific value is a function of the amount and magnitude of the physical components of action contained by that set. Therefore, what counts ultimately for the non-specific value is how much of the substance of freedom (sheer quantity of physical space of action) is contained in a freedom or sets of freedoms. In keeping with this reading, Carter and Kramer argue the following: “On Carter’s normative argument, the non-specific value of a person’s set of freedoms is solely a function of the degree of the overall freedom that is constituted by that set” (Carter & Kramer 2008, 94).

Assuming, then, that we can measure the extent of physical space of action contained in different freedoms and sets of freedoms, we can produce a ranking with regard to the

amount of non-specific value they instantiate. Carter indeed believes that one of the reasons why we have the intuition that the option, say, to choose one's career freely is more important than, say, the option to choose between different brands of washing powder, is because the former freedom, by virtue of yielding more physical space of action, instantiates more non-specific value than the latter (Carter 1999, 143). In what follows, I will outline the way in which overall freedom ranks different options (and sets of options).

Carter's argument is that the ranking between different options can not only be made with regard to the specific value of these options (be they self-assessed or externally assessed; or deemed to be of objective or subjective value) but also with regard to the non-specific value of freedom. Indeed, according to Carter, "the comparison of the choice between different careers and the choice between different washing powders can be made by reference not only to degrees of importance but also to extents of action" (Carter 1999, 143). Note what Carter means here by "degrees of importance" is the specific value of freedom, while by referring to "extents of action" he is referring to the amount of freedom contained in the two options. Carter wants to convince us that the fact that the first freedom provides a greater extent of action explains partially why we all understand that choosing one's career is more important than choosing between different brands of washing powder. Carter urges us to "ask ourselves *why* the choice of careers 'matters' so much more than that of washing powder" (Carter 1999, 143). He then surmises whether this is not "*in part* (though of course not *only*), because choosing between two different careers involves choosing between enormous sets of actions ranging over whole lifespans, whereas the choice between two brands of washing powder does not" (Carter 1999, 143).

The argument is the following. If we have freedom x which is choosing between different brands of washing powder and freedom y which is choosing between different careers, we have a strong intuition that y matters more than x . In other words, if we had to choose between the freedoms, we should want to choose y (barring some very rare

circumstances where x , for whatever reason, has a higher specific value than y). If we look at the two freedoms from the perspective of their specific value, it appears rather straightforward that for the average person y matters more than x . Indeed, in choosing y I have the option to try to become an astronaut because one of my deepest desires is to see earth from space, or I have the option to attempt to become a lawyer because I believe my life's purpose is to defend people's rights. Put differently, it is very easy to find a number of specific purposes for which the freedom of choosing one's career freely is essential. Thus, we can readily see that y plausibly has a high specific value in that it is the precondition for the pursuit of many important ends in life. In the case of x things stand differently, however. X , of course, has a degree of specific value in that it enables us to have a choice of different brands of washing powder. If I did not have x at my disposal, for the rest of my life I would have to wash clothes with the same detergent which might cause me some annoyance. Yet, it seems evident that the specific value of x is not particularly high compared to y given that x does not serve a great many important purposes. Thus, our interest in y is clearly higher than in x , from the perspective of the specific value of freedom. However, this way of ranking freedom y higher than x is not open to Carter's conception of overall freedom since the ranking depends on the specific values of the freedoms in question.

Carter believes, however, that also from the standpoint of overall freedom, y is superior to x given that y , in addition to having a higher specific value, also has a higher non-specific value than x . I would agree since it seems obvious that the freedom of choosing one's career freely yields more in terms of physical space of action than the freedom of choosing between different brands of washing powder. To illustrate, being in a position to choose between different brands of washing powder certainly gives us some degree of overall freedom as it contains a degree of physical space of action. It involves, for instance, going to the local grocery store and choosing between different brands of washing powder. However, it is implausible that this freedom would yield more physical space of action than

the freedom of choosing one's career freely which might involve traversing the entire globe, flying to the moon with a spacecraft, and engaging in a variety of different actions in different places. It is of course very hard to say (probably even practically impossible) how much physical space of action these freedoms actually yield.¹²⁴ Yet, it seems straightforward that the freedom of choosing one's career freely yields more of it than the freedom of choosing between different brands of washing powder. If this reasoning is correct, then objectively y instantiates more non-specific value than x . This means that also from the perspective of the non-specific value of freedom, the freedom to choose one's career freely is to be preferred over the option to choose between different brands of washing powder. We can, thus, say that the non-specific value of freedom is a function of the aggregation of the sets of actions contained in the freedom (or entire sets of freedoms).

Note, however, that there is somewhat of a puzzle here regarding how exactly the non-specific value of freedom maps onto the extent of action available to a person.¹²⁵ Indeed, Carter and Kramer remark the following: "it need not be the case that more and more increments of overall freedom always yield more and more increments of the non-specific value of freedom; the function may instead reflect the existence of a satiation point" (Carter & Kramer 2008, 94 fn. 6). The idea seems to be that at a very high level of overall freedom, the contributions to the non-specific value of freedom which additional options make progressively diminish and eventually become marginal. Thus, if we imagine that there is a function which maps the non-specific value of freedom onto the extent of action available to a person, the function does not necessarily have to be linear, but may for instance plateau at a certain point. Thus, promoting overall freedom might not always entail a promotion of the non-specific value of freedom.

¹²⁴ However, practical infeasibility does not equal conceptual incoherence, and it is certainly conceptually coherent to distinguish between different options with regard to the units of overall freedom they yield.

¹²⁵ I am grateful to Ian Carter for a helpful discussion on this point.

Further, this perspective also appears to allow for different functions altogether when we focus on the various reasons for which freedom has non-specific value. More specifically, when considering overall freedom as a contributor to individual well-being, the function might plausibly have a point of satiation. How much indeed does the 10,000th option to drink a different brand of beer add to an individual's well-being? Plausibly not much (Carter 1999, 83-84).¹²⁶ However, perhaps a person's autonomy is always enhanced by having another option at her disposal.¹²⁷ The general presumption, however, is clearly that having more freedom is better than having less and that the reason for this is that more freedom instantiates more non-specific value.

In summation, Carter provides a way for overall freedom to complete Task II. In Carter there is a story about where the value of overall freedom comes from, and he provides a way for us to make value assessments based on freedom's non-specific value.

4.3 The Determination Task

I argued that conceptions of freedom can serve as an input for theories of justice. They do so by being the basis for the principles of justice. Is overall freedom able to fulfill that task?

¹²⁶ In general, it is challenging for Carter to explain why it is better to have a diversity of options at one's disposal than options that are similar. For example, take three options: a) going to the cinema using a red car, b) going to the cinema using a blue car, c) going to the cinema using a helicopter. Probably our intuition in this context should be that sets (a, c) and (b, c) yield more freedom than (a, b). The reason for this is that set (a, b) contains two options that are almost identical. Indeed, (a, b) provides two options of doing the same thing, while the other two sets provide us options that are more diverse. Now, the most natural way to argue that a more diverse set of options yields more freedom than a less diverse one is by appealing to the specific value of those options concluding that the more diverse set serves more purposes than the less diverse one. Doing so, however, would introduce evaluative concerns relating to the content of the options in question, which Carter aims to avoid. Carter in *A Measure of Freedom*, therefore, presents a different way to address the challenge. He argues that there is a "law of 'diminishing marginal freedom' with respect to options which are not significantly different from those one already has" (Carter 1999, 2010). Carter claims that his empirical approach to measuring freedom could accommodate the judgement that a diverse option set yields more freedom than a less diverse one by arguing that the physical components of action contained in the options of a less diverse set overlap to a greater degree than in a more diverse one, which can be reflected in measurements of overall freedom. For a detailed explication of Carter's view on diversity and an insightful critique thereof, see (Shnayderman 2016).

¹²⁷ It would, thus, be interesting to determine exactly how these different functions behave. Unfortunately, I cannot undertake that endeavor here.

In this section, I will make the point that relevant for the completion of Task III is Carter's proposal that we should move toward a freedom-based theory of justice. I will argue however that the matter of Carter's conception completing Task III requires further analysis.

Carter provides some indications as to how overall freedom could complete *The Determination Task*. Indeed, recall that one of the central demands which Carter makes is that we should move toward a freedom-based theory of justice, demanding that "freedom itself ought to be one of the *distribuenda* of our theory of justice" (Carter 1999, 68). This entails two central theoretical moves. The first is to understand freedom as overall freedom and to acknowledge freedom's non-specific value, i.e the value that freedom has *qua* being freedom (Carter 1995, 1999, chapter 2). The second is the demand that one of the things a liberal theory of justice should be concerned with is the promotion of freedom as such (Carter 1999, 73). In fact, we have seen in Chapter II that central to Carter's rejection of justice-based conceptions of freedom is to carve out theoretical space for this fundamental justificatory role of freedom as such. In this sense, Carter argues that if one defines freedom in terms of justice "freedom loses its status as one of the fundamental moral values grounding a liberal theory of justice" (Carter 2011, 491). Now, while we do not have to reject justice-based conceptions of freedom in order to let overall freedom play this fundamental work, it is worthwhile to scrutinize how exactly Carter believes we should move toward a freedom-based theory of justice.¹²⁸

What matters here is Carter's suggestion "that, for any proposed set of rights, we want to be able to say what that set implies in terms of freedom" (Carter 2021, 137). Or put differently, Carter argues that "[i]f we are liberal normative theorists, we ought to be able to defend a particular set of rights on the ground that it is good for freedom" (Carter 2021, 137). The example which Carter gives in this context is that, for instance, "if liberals favour private

¹²⁸ As we have seen in Chapter II, we may employ, both, a justice-based conception and an empirical conception.

property over communal property, one reason one would expect them to be able to give is that private property is, at least on the whole, better for freedom” (Carter 2021, 137), where “freedom” is, of course, understood as overall freedom.

Importantly, this does not mean that overall freedom needs to be the only concern when it comes to favoring one set of rights over another. Instead, according to Carter, we should consider freedom “an independent value the promotion or preservation of which can supply *a* reason for supporting a particular structure of rights” (Carter 2011, 491; my emphasis). Thus, arguing that what a given set (or structure) of rights means for people’s degrees of freedom should be regarded as one important reason for supporting that set, does not require us to regard a concern for overall freedom as the only reason for supporting a set of rights. In other words, moving toward a freedom-based theory of justice means using overall freedom as a criterion for the justification of rights, but does not require that it be the only one. Hence, I regard Carter as proposing that one way in which overall freedom can fulfill Task III is by serving as a normative criterion for the justification of rights.

In summation, in order to establish how well Carter’s conception of freedom fares in terms of Task III, we should test the feasibility of understanding overall freedom as a normative criterion for the justification of rights by asking whether using overall freedom in this manner leads to a plausible picture of justice.

Conclusion

In this chapter I produced an explication of overall freedom as an empirical conception of freedom which allows us to make sense of people having freedom in different degrees. My hope was to produce the strongest possible version of overall freedom by not only explaining what overall freedom is but also by making the point of it being a valuable thing. Afterward, building on Dowding and Van Hees (2007), I developed a framework to analyze Carter’s

conception of freedom. I argued that an adequate conception of freedom must complete three tasks successfully: *The Linguistic Task* (Task I), *The Value Task* (Task II), and *The Determination Task* (Task III). Thereafter, I outlined how Carter's conception of freedom completes the different tasks arguing, however, that when it comes to Task III more needs to be said than I can say in this chapter. Thus, in Chapter IV we will deal with the implications of moving towards a freedom-based theory of justice.

Chapter IV – Moving Toward a Freedom-Based Theory of

Justice

Introduction

In this chapter, I will analyze Carter’s claim that it is important that we should be able to defend a set of rights on the basis that it is good for overall freedom (Carter 2021, 137). Making overall freedom play this fundamental justificatory role moves us toward a freedom-based theory of justice. This can be done in two ways. Firstly, people’s interest in overall freedom justifies a *singular right* to overall freedom. Secondly, people’s interest in overall freedom justifies employing overall freedom as an *across-the-board criterion* for the justification of the entire set of rights. I will analyze both ways in which we can move to a freedom-based theory of justice.

The first way can be found in Carter’s book *La libertà eguale* (2005). In his work, Carter argues for a singular right to freedom that entitles everyone to a certain degree of overall freedom. This right is ultimately cashed in in terms of an entitlement to a certain amount of equal capital and basic income. Thus, Carter wants to cash in a potential right to freedom in terms of an entitlement to a certain degree of financial means. Building on Cohen (1995, 57-58) the idea is that money is a highly generalized license for doing things in general. Thus, financial means, to Carter, are a reasonable indicator for overall freedom.

I will argue that this is a plausible way of cashing in on the notion that people have an interest in a degree of overall freedom. Moreover, I will argue that the distributive mechanism that Carter proposes appears to be compatible with the Rawlsian approach to the distribution of financial means. Famously, income and wealth are given a prominent place in *justice as fairness*, as they are included among what Rawls called the “primary goods” (Rawls 2001, 57-59). Similarly to Carter, Rawls understood income and wealth as “all-purpose means (having an exchange value) generally needed to achieve a wide range of ends

whatever they may be” (Rawls 2001, 58-59). Hence, in Rawls, income and wealth are part of what ought to be distributed by a successful conception of justice. I will advance the point that while both authors justify their concern for the distribution of financial means by employing different theoretical tools, they converge on the importance of people having egalitarian entitlements to them. I will then consider whether there is an argumentative advantage for justifying egalitarian measures based on a concern for freedom and will highlight some of the limitations associated with cashing in a right to overall freedom in terms of an entitlement to financial means.

Afterward, I will turn to the second way of moving toward a freedom-based theory of justice which regards overall freedom as an *across-the-board criterion* for the justification of a set of rights. In order to make sense of the idea, I will construct what I call the Overall Freedom Test. The idea is, building on Hillel Steiner, that we should understand rights as claims to degrees of overall freedom. Rights (and entire sets of rights), then, do more for our interest in overall freedom, if they normatively protect more overall freedom rather than less. Thus, we have a reason to prefer rights (and entire sets of rights) that protect higher amounts of overall freedom over those that protect lesser amounts.

I will argue, however, that employing this test leads to some counterintuitive conclusions. Firstly, we can only ever know how much overall freedom a right protects if we carry out actual measurements. However, we do not at the moment have precise measurements of overall freedom at our avail. Secondly, a right to freedom of speech seems to protect only a small amount of overall freedom. If that is the case, it is reasonable to follow that the right to freedom of speech would score poorly on the Overall Freedom Test. This would mean that the right to freedom of speech, from the perspective of the Overall Freedom Test, is rather insignificant. Thirdly, choosing the set of rights which provides the most overall freedom would make it logically possible to trade-off political rights for economic ones (or *vice versa*), provided that such a trade-off would lead to people enjoying more

overall freedom than would otherwise be the case. I will ultimately conclude that we should not choose the second way of moving toward a freedom-based theory of justice.

In section 1, I revisit Carter's notion that we should move toward a freedom-based theory of justice taking into account the two ways in which this can be done. In section 2, I will explain what I mean by "right" building on Hohfeld (1919). In that section, I will also show briefly how Rawls's conception of freedom can be rendered more understandable through the Hohfeldian framework. In section 3, I will analyze the two ways of moving toward a freedom-based theory of justice. This will be followed by a conclusion.

1. Toward a Freedom-Based Theory of Justice

In Chapter III, I developed (building on Dowding and Van Hees) an approach for the analysis of conceptions of freedom. There I said that one of the central tasks that an adequate conception of freedom needs to fulfill is what I called *The Determination Task* (Task III). I defined it as the task of aiding in painting a plausible picture of what social justice requires. In so doing, I proposed a functionalist approach to the analysis of conceptions of freedom.

I also argued that relevant for Task III is Carter's proposal that we should move toward a "freedom-based theory of justice" (Carter 1999, 69). The idea is that overall freedom should be part of a theory of justice. According to Carter, freedom should have the "status as one of the fundamental moral values grounding a liberal theory of justice" (Carter 2011, 491). One of the ways this idea can be cashed in is by regarding freedom as "an independent value the promotion or preservation of which can supply a reason for supporting a particular structure of rights" (Carter 2011, 491). The idea is that "for any proposed set of rights, we want to be able to say what that set implies in terms of freedom" (Carter 2021, 137), and "we ought to be able to defend a particular set of rights on the ground that it is good for freedom" (Carter 2021, 137). Expressed differently, one of the central things which

a theory of justice does is specify what kinds of rights people have. One manner, then, in which overall freedom can complete Task III is by serving as a guide for the justification of the set of rights that people need to have in order for the demands of social justice to be fulfilled.

To my mind, the idea that overall freedom should serve as a guide for the justification of a set of rights can be interpreted in two ways. The *first* is that overall freedom can serve to establish a *singular right* to it. This form of the argument can be found primarily in *La libertà eguale* (2005), where Carter argues that people are entitled to a right to freedom (“diritto alla libertà”). This is a limited way of justifying a set of rights based on overall freedom as it merely requires us to ensure that the set of rights includes, among other rights, a right to overall freedom. The second way, in which overall freedom may serve in the justification of a set of rights, is by functioning as an *across-the-board criterion*. The idea is that the set of rights, in its entirety, should contribute to overall freedom. This is an argument similar to the Rawlsian proposal of individuating the basic liberties with regard to their establishing the conditions under which the two moral powers can be exercised (Rawls 1993, 335; 2001 45). Therefore, the first way of using overall freedom for the justification of a particular set of rights would be a step toward basing justice on freedom as an independent ideal, while the second would be a leap in that direction.

At the outset of this dissertation, I said that I regard Carter’s work as posing a challenge to the way in which Rawls conceived of the relationship between freedom and justice. One sense in which this is so is with regard to the way Carter proposes we should justify rights within a theory of justice.¹²⁹ Recall that Rawls’s basic liberties are to be understood as certain fundamental rights,¹³⁰ and that they are to be selected with respect to

¹²⁹ Note that I am here mainly reading Carter’s argument as applying to what we may call basic rights, i.e. rights that are of fundamental importance.

¹³⁰ Note that I am not assuming here that these are the only rights with a proper conception of social justice confers upon people. However, the assumption is that the basic liberties are the most important rights that people need to possess.

their ability to function as the necessary institutional means to protect “the full and informed and effective exercise of the moral powers in one (or both) of the two fundamental cases” (Rawls 1993, 335). This has been called the Moral Powers Test (Brennan 2020). To Rawls, as Cécile Laborde notes, “citizens have a basic interest in being able freely to endorse and pursue their own conceptions of the good” (Laborde 2013, 409). Thus, protecting the conditions under which the development and the exercise of the two moral powers is possible, protects what Rawls would call one of people’s “‘higher-order’ interests” (Rawls 1993, 74). This can be read as implying an interest theory of rights, according to which, as Raz notes, “‘X has a right’ if and only if X can have rights, and, other things being equal, an aspect of X’s well-being (his interest) is a sufficient reason for holding some other person(s) to be under a duty” (Raz 1986, 166).

The challenge which Carter’s work poses to Rawls’s approach to the selection of rights is that when we establish the fundamental rights people should have as a matter of social justice, we should use people’s fundamental interest in a degree of overall freedom as one important normative guide.¹³¹¹³² Carter, of course, admits that “[h]uman interests are

¹³¹ In that sense, to Carter, “justice is grounded in respect for rights, is grounded in the satisfaction of interests, is grounded in the protection or promotion of freedom” (Carter 2015, 291).

¹³² There is a question as to what notion of “fundamental” interest I am employing in this context. One may argue that Carter’s argument for the non-specific value of freedom establishes overall freedom being extrinsically (i.e. instrumentally or constitutively valuable) not intrinsically valuable. Why, then, is our interest in overall freedom regarded as “fundamental”? Moreover, if we count, both, people’s interest in overall freedom and their interest in autonomy and agency as fundamental, are we not double-counting? As we have seen, the source of overall freedom’s value is to be found in concepts such as autonomy and agency that can be seen as intrinsically valuable. Do people then have a fundamental interest in overall freedom, or do they have a fundamental interest in autonomy and agency? On my interpretation, Carter’s argument entails that people have a fundamental interest in overall freedom because it assumes that people cannot have autonomy or agency without at least a certain degree of overall freedom. Thus, overall freedom is fundamental in promoting things that are of intrinsic value. This phraseology entails, however, that the interest people have in autonomy and agency is *more* fundamental than their interest in overall freedom. Hence, some might be more comfortable using an adjective different to “fundamental” to classify people’s interest in overall freedom to highlight the importance of the interest people have in autonomy and agency. At any rate, there is no risk in double-counting because our interest in autonomy and agency can be seen as going beyond our interest in overall freedom. If it were demonstrated that overall freedom is not constitutive of autonomy and agency, we would still have an interest in the latter. Moreover, if autonomy and agency require among other things a certain level of overall freedom, then our interest in overall freedom would be satisfied at one point while our interest in autonomy and agency may not. Indeed, there may be other things that are constitutive of autonomy we have a fundamental interest in that still need to be satisfied once our fundamental interest in overall freedom is. I am grateful to Ralf Bader for pushing me on this point.

indeed multiple and varied” (Carter 2009A, 181), and that “it is utterly implausible to claim that the interest in freedom is the only human interest” (Carter 2009A, 180). Thus, to Carter, the interest people have in overall freedom is not the only interest that ought to be protected by rights in a theory of justice. However, as demonstrated in Chapter III, Carter has put forward several reasons for people’s fundamental interest in having a degree of overall freedom, for example, to treat people as “points of origin of ends” (Carter 2005, 142; my translation; Carter 2009A, 181). If people are to be treated as such, from Carter’s point of view, they need to be able to choose their own paths in life. Thus, being freer rather than less gives them more opportunity to do so. These considerations should, then, be reflected in determining what justice requires. One manner in which this can be done is by using overall freedom as a normative criterion for the justification of the set of rights central to social justice, which can be understood in the two ways outlined above. This raises the question: What are the upshots of moving toward a freedom-based theory of justice?

2. Rights as Relations

Before we can answer this question, I shall define what exactly I mean by “right”, and a “set of rights”. In chapters I and II, I discussed “rights” in the context of claim-rights and privileges. What I shall do in this section is complete the Hohfeldian framework which includes not only claim-rights and privileges but also powers and immunities. I will argue that oftentimes when we speak of, say, the right to freedom of speech, what we have in mind is a cluster of the four Hohfeldian relations. Based on this, I will show how the Hohfeldian framework enables us to get the full picture of Rawls’s account of freedom.

In defining what it means to have a right, Hohfeld’s seminal “Fundamental Legal Conceptions as Applied in Judicial Reasoning” (1919) is a good starting point. In it, Hohfeld argued that often “right” is employed ambiguously in that it is used to refer to distinct legal

relations (also called “Hohfeldian incidents”). Indeed, according to Hohfeld, “the term ‘rights’ tends to be used indiscriminately to cover what in a given case may be a privilege, a power, or an immunity, rather than a right in the strictest sense” (Hohfeld 1919, 36). Thus, to Hohfeld, when we employ “right” we often mean one of four different legal relations which can exist between people. We can mean a right (also “claim-right” or “right in the strict sense”) which corresponds to a duty, a privilege (also “liberty” or “liberty-right”) which corresponds to a non-duty, a power which corresponds to a liability, or an immunity which corresponds to a disability. What does it mean to stand in these different legal relations with other people?

According to Hohfeld, “if X has a right against Y that he shall stay off the former’s land, the correlative (and equivalent) is that Y is under a duty toward X to stay off the place” (Hohfeld 1919, 38). Thus, X has a claim that Y does not enter his land.¹³³ In this context, one can distinguish between negative and positive claim-rights. According to Jan Narveson, a negative claim-right entails “upon B the duty to refrain from preventing A from doing x”, while a positive claim-right entails “upon B the duty to do something [...] to *enable* or *empower* B to do x” (Narveson 2001, 61). For example, as citizens we have a negative claim-right of our phones not being tapped by the government, which places a duty upon the government to refrain from tapping our phones. On the other hand, we have the positive claim-right to be protected by the police, which places a duty on the police to protect us from harm, say, by arresting the person trying to rob us.¹³⁴

In the case of a privilege, things stand differently. According to Hohfeld, “a privilege is the opposite of a duty, and the correlative of a ‘no-right’” (Hohfeld 1919, 38-39). Indeed, “whereas X has a *right* or *claim* that Y, the other man, should stay off the land, he himself has the *privilege* of entering on the land; or, in equivalent words, X does not have a duty to

¹³³ Note that according to Waldron a claim-right or even a particular duty “generates waves of duties that back it up” (Waldron 1989, 510).

¹³⁴ For a critique of the notion of positive claim-rights, see Steiner 1994 and 1998.

stay off” (Hohfeld 1919, 39). Crucially, as Simmonds and Neoh note, conceptually, “X’s liberty does not entail any duty on the part of Y not to interfere” (Simmonds & Neoh 2022, 318). For example, “[t]he fact that X has a liberty (as against Y) to wear a hat does not entail that Y has a duty not to interfere with X’s hat-wearing” (Simmonds & Neoh 2022, 318). Indeed, according to the authors, “if Y monopolises the world supply of hats and refuses to sell one to X [...] [,] X may then be unable to wear a hat, but this does not mean that X possesses no liberty (in the Hohfeldian sense) to wear one” (Simmonds & Neoh 2022, 318). Therefore, Simmonds and Neoh stress that a “Hohfeldian liberty is not a general factual ability or opportunity to perform an action: it is simply the absence of a duty not to perform the action” (Simmonds & Neoh 2022, 318).

In this context, it is illuminating to distinguish, as Hillel Steiner does in *An Essay on Rights* (1994), between “unvested” and “vested” liberties. Unvested liberties (or privileges) are exposed “to the obstructive impact of others’ exercises of their powers and liberties” (Steiner 1994, 87), as seen in the hat example above. Contrariwise, according to Steiner, a “vested liberty is one surrounded by an impenetrable perimeter” that “consists of various duties in all persons other than the liberty-holder not to interfere” (Steiner 1994, 89). Consequently, as Glanville Williams argues, “[n]o one ever has a right to do something; he only has a right that some one else shall do (or refrain from doing) something” (Williams 1956, 1145). This is because, as Kramer notes, “rights must be specified by reference to the actions of the people who bear the correlative duties – rather than to the actions of the people who hold the rights – whereas liberties must be specified by reference to the actions of the people who hold the liberties” (Kramer 1998, 13-14). In that sense, Randy Barnett follows that rights “are concepts that define a domain within which persons ought to be at liberty or free to do as they please free of interference by others” (Barnett 2014, 63). Thus, as Carter establishes, what one is free to do within the Hohfeldian framework, i.e. what one has the normative freedom to do, is specified not by claim-rights but by privileges. However, some

important privileges are protected by claim-rights (they are “vested” liberties or privileges) which aim to render the privilege more robust (Carter 2005, 101-104).

Moreover, according to Simmonds and Neoh, it is “relatively unusual for liberties to be protected by general claim-rights obtaining against all forms of interference with the liberty” (Simmonds & Neoh 2022, 329). However, generally speaking, “[l]iberties receive a degree of protection from the general claim-rights against assault and trespass, and further claim-rights (such as claim-rights against forms of unfair trade competition) may be recognised to provide additional protection” (Simmonds & Neoh 2022, 329). Importantly, according to the authors, “[t]he proper extent of such protective claim-rights is a matter of policy judgment in relation to each type of liberty: it is not the case that the protective claim-rights are entailed by the liberty” (Simmonds & Neoh 2022, 329).

A right in a strict sense, to Hohfeld, is also to be distinguished from what is in fact a power. The term “power”, according to Hohfeld, takes note of the fact that changes in legal relations can result “from some superadded fact or group of facts which are under the volitional control of one or more human beings” (Hohfeld 1919, 50-51). According to Hohfeld, “X, the owner of ordinary personal property ‘in a tangible object’ has the power to extinguish his own legal interest (rights, powers, immunities, etc.) through that totality of operative facts¹³⁵ known as abandonment; and – simultaneously and correlatively – to create in other persons privileges and powers relating to the abandoned object, – e.g., the power to acquire title to the latter by appropriating it” (Hohfeld 1919, 51). Thus, for example, I may bequeath on my child a plot of land. This act transfers to her some of the rights, privileges, powers, and immunities I previously enjoyed. As a consequence of this exercise of my power I acquire the duty not to trespass on my child’s newly acquired property; and my child, in turn, acquires the power to bequeath her newly acquired property to her child. Similarly,

¹³⁵ According to Hohfeld, “[o]perative, constitutive, causal, or dispositive facts are those which, under the general legal rules that are applicable, suffice to change legal relations, that is, either to create a new relation, or to extinguish an old one, or to perform both of these functions simultaneously” (Hohfeld 1919, 32).

however, according to Kramer, “somebody who contravenes a legal requirement has thereby exercised a power to alter her own legal positions and the legal positions of certain other people such as law-enforcement officers” (Kramer 2018, 37). Indeed, in so doing, “she has made herself liable to undergo arrest or other measures of enforcement, and she has invested certain people with legal powers and legal liberties to resort to such measures” (Kramer 2018, 37).

The correlative of a power is a liability. Yet, liability should not be understood as having a negative connotation. Indeed, a power, to Hohfeld, is essentially “one’s affirmative ‘control’ over a given legal relation as against another” (Hohfeld 1919, 60). Thus, my being a judge and exercising the power to order you to pay your parking fine or else to serve a day in jail, creates in you the duty to pay your fine or else serve a day in jail. Similarly, however, as we have seen in the last paragraph, my exercising the power to bequeath my property to my child creates certain powers, privileges, immunities, and liabilities in my child’s legal relations. Therefore, Jones concludes that to Hohfeld, “I may be ‘liable’ to the conferral, as well as to the removal, of claim-rights, liberty-rights, powers or immunities” (Jones 1994, 24).

Finally, people sometimes employ “right” wanting to indicate what to Hohfeld is in fact an immunity. According to Hohfeld, “an immunity is one’s freedom from the legal power or ‘control’ of another as regards some legal relation” (Hohfeld 1919, 60). If X owns a plot of land with a house on it, X has the power to do many things with it. For example, X has the power to sell it to Y or to rent it out to Z. Yet, X is also immune to certain powers. For instance, Y does not have the power to transfer X’s property to himself. However, according to Hohfeld, “[i]f, indeed, a sheriff has been duly empowered by a writ of execution to sell X’s interest, that is a very different matter: correlative to such sheriff’s power would be the liability of X, – the very opposite of immunity (or exemption)” (Hohfeld 1919, 60). Therefore, according to Simmonds and Neoh, “[i]mmunities are essentially a matter of not

being under a liability to have one's legal situation altered by the act of another" (Simmonds and Neoh 2022, 320).

One important upshot of the Hohfeldian analysis is that when we ask ourselves what, say, people's right to vote requires in terms of legal relations, we should say it requires a cluster of the four Hohfeldian relations. We shall say that the right to vote requires the legal power to vote, in the sense that we can change another person's legal relations (i.e., by transforming an ordinary citizen's legal relations to those of a member of parliament). Yet, the right to vote would also include certain privileges, such as going to vote on election day at a specific time providing certain identification. Some of these privileges would be vested, in the sense that they are protected by certain claims, namely not being stopped from voting by others who do not like our political views. Therefore, the cluster would also include certain claim-rights, rights in the strict sense. Moreover, plausibly the cluster of Hohfeldian relations would include certain immunities, such as the immunity on the part of the voter from being stripped of the right to vote by the legislature.¹³⁶ However, we may also think that given certain exceptional situations, such as my being imprisoned for robbery, I am liable to having my right to vote suspended or revoked entirely. Thus, the cluster of legal relations, which makes up the right to vote, would also include certain legal liabilities. A set of rights is, then, merely a set of such rights analyzable through clusters of Hohfeldian legal relations.¹³⁷

Before we move on, I will briefly return to Rawls's conception of freedom. Following the explication of the Hohfeldian framework, we can better understand how the basic liberties approach, which has as its main aim to establish a "regime of liberty" (Rawls 1982, 38), works in Rawls. As we have seen, a basic liberty, according to Rawls, is characterized by a "rather intricate complex of rights and duties" (Rawls 1999, 177), creating

¹³⁶ Indeed, according to Kramer, a claim-right that is not protected by an immunity is a "hollow right" for it can be extinguished by someone else's power (Kramer 2010B, 33).

¹³⁷ I am thankful to Adina Preda for making this cluster-view clear to me.

such that in this context one is free under two conditions. First, it must “be permissible for individuals to do or not to do something” (Rawls 1999, 177-178), and, second, “government and other persons must have a legal duty not to obstruct” (Rawls 1999, 178).¹³⁸ Thus, translated into the Hohfeldian framework, what Rawls means by basic liberties, as was established in Chapter I, are vested liberties (or vested privileges). These vested liberties, which are of course normative in nature, then create a “framework of legally protected paths and opportunities” (Rawls 1993, 325) crucial to the development and exercise of the two moral powers (Rawls 1993, 293; 2001, 45).

Employing the Hohfeldian perspective, the account of liberty in Rawls can be extended to incorporate the other legal relations as well. For example, it stands to reason that if there are liberties that are basic, then there are also those which are non-basic. These non-basic liberties are permitted – such as, say, smoking a pack of cigarettes and drinking two bottles of wine – but they do not receive direct protection through the imposition of duties (be they positive or negative) like the basic liberties do.¹³⁹ But they may, of course, receive indirect protection. Building on Ralf Bader, we may term “license” everything that is not permitted in Rawls’s account of freedom (Bader 2018A, 2018B). Importantly, thwarting the exercise of a liberty (i.e. a Hohfeldian privilege) is only an act of license when it contravenes a duty. For example, your thwarting my liberty of filling a particular vacancy by giving a better job-interview is interfering with my exercising the liberty of filling that particular vacancy. However, it does not amount to an exercise of license, for it does not violate any of my claim-rights. The important point is that thwarting the exercise of unvested liberties is perfectly acceptable provided that no duties are violated, and such thwarting will regularly occur in people’s interactions.

¹³⁸ Recall that this argument does not mean that any kinds of legal rights or duties are compatible with the demands of *justice as fairness*. Despite the fact that Rawls speaks about *legal* rights and duties and not of *moral* rights and duties, remember that these rights are derived from the moral entitlements recognized by the parties, in themselves and in others, in the original position.

¹³⁹ Thus, in principle, those non-basic liberties could be traded off (Brennan 2020, 493).

Moreover, to Rawls, in a just society, our basic liberties create duties in other people to refrain from interfering with, for instance, speaking our minds freely. Yet, plausibly, the basic liberties are not the only liberties vested with duties. For example, when we pay for a service, then the provider has a duty to perform that service (e.g., to paint my garage green). Now in both cases, were the duty-holders to fail to discharge their duties, this would count as a violation of the right-holders' entitlements. Yet, the rights-violation is more egregious where the basic liberties are violated. The basic liberties, then, under my interpretation, contrast not only with unvested liberties but with other vested liberties that are not protected with the same urgency. Furthermore, in so far as the second principle of justice, which as demonstrated in Chapter I applies to the legislative stage, produces entitlements and privileges on part of the citizens, they also establish vested liberties. Yet, again, the Rawlsian intuition would be to argue that violating those vested liberties, while certainly constituting injustice, is not as bad as violating the basic liberties.¹⁴⁰

In addition to including Hohfeldian privileges, in order for the Rawlsian account of liberty to be complete, there needs to be space devoted to legal relationships that involve Hohfeldian powers and immunities (and their correlatives). The reason why this is the case is because powers and immunities can explain how the legal situation of a person changes or remains the same (Simmonds and Neoh 2022, 320). As stressed before, the act of voting is best understood as exercising a power, and this power, as well as affiliated claim-rights and privileges, should not be liable (at least without justification) to be extinguished through someone else's legal power (e.g. the president). Thus, the immunity in question explains how the legal status of a person as one that has the right to vote cannot change, for example by simple presidential decree. The power, in turn, explains how the relationship of the person

¹⁴⁰ Hence, one way in which Rawls's account of freedom could be rendered more precise is by employing a three-pronged typology distinguishing between strongly vested liberties (basic liberties), vested liberties, and liberties (mere permissions).

being elected to public office changes. The basic liberties overall, then, seem to be those vested liberties that are protected by immunities. However, they need not be equally immune.

For example, Rawls speaks in *Justice as Fairness – A Restatement* (2001) of “rights and liberties specified by the liberty and integrity (physical and psychological) of the person” (Rawls 2001, 44). Assume that these rights include a claim-right to not being tortured. Presumably, in a just society that claim-right is not subject to being extinguished at all, while, as argued before, I may lose the power to vote in certain circumstances. Therefore, since powers and immunities serve to illuminate the workings of the “regime of liberty” advocated for in Rawls (1982, 38), they should be included in Rawls’s account of freedom. Therefore, what constitutes freedom in Rawls is a just ordering of the four different Hohfeldian relations. However, all of this is not to say that Rawls did something wrong in defining freedom in terms of specially vested liberties (i.e. the basic liberties), it is merely the case that we should extend the Rawlsian account of freedom to get the full picture of how it works.¹⁴¹

In summation, it is important to keep in mind that when we speak of “rights” we can meaningfully distinguish between four types of legal relations in which people can stand to one another. However, it is also the case that when we speak of rights such as the right to vote we should think of such a right as a cluster of Hohfeldian relations instead of seeing it, say, only as a legal power or a privilege. A structure of rights is, then, just a set of such clusters. Moreover, I have shown that Rawls’s account of liberty can be made sense of through the Hohfeldian scheme.

¹⁴¹ Perhaps one of the reasons why Rawls did not go into further detail with his account of liberty is that his principal aims were to demonstrate that the two principles of *justice as fairness* and their lexical ordering would be chosen by the parties in the original position. For his argument about the two moral powers to work, pointing to the importance of certain particularly important vested liberties appears to be enough. The rest of the regime of liberty can be deduced from there.

3. Rights and Overall Freedom

In section 1, I argued that moving toward a freedom-based theory of justice means regarding freedom as an independent ideal and then applying it to determine what justice requires. I argued further that here I am concerned with two ways in which this justificatory role can be cashed in. The first is that the interest in overall freedom can justify a singular right to overall freedom. The second is that the interest in overall freedom can prompt us to regard overall freedom as an *across-the-board criterion* for the justification of the entire set of rights. In what follows, I will analyze the two ways in which overall freedom can play a role in the justification of rights establishing what are the upshots of moving toward a freedom-based theory of justice. I will begin with the first way.

3.1 The First Way to a Freedom-Based Theory of Justice

In the following sections, I will analyze Carter's proposal for the integration of a singular right to freedom into a theory of justice. There are three central steps in Carter's argument. The first is that people's fundamental interest in overall freedom justifies a claim of every person to a certain degree of overall freedom that other people (and the state) should have a duty not to infringe upon. The second is that we should use financial means as a proxy for people's levels of overall freedom. The third is that we should cash in people's right to freedom in terms of a distributive mechanism for financial means. For Carter, people's right to overall freedom entitles everyone to a share of the distribution of financial means in society. More specifically, to Carter, people are entitled to two thresholds of overall freedom. The first is an equal amount of basic capital that they are to receive at the age of maturity. The second is a certain amount of basic income that people are to receive should they fall below the minimum threshold of overall freedom.

I will then compare Carter's freedom-based approach to Rawls's approach to justice. I will focus primarily on the way Rawls thought about the distribution of financial means. Rawls regarded income and wealth as one of the five primary goods. Thus, he perceived it as a task of a theory of justice to provide guidance for how we should think about their distribution. In Rawls, there are three principles that have a bearing on the distribution of financial means. These are the difference principle, the fair equality of opportunity principle, and the fair-value of the political liberties principle. They can be regarded as setting out rules for the distribution of financial means. Importantly, they do not aim at determining a particular pattern for the distribution of financial means. Instead, the idea is that whatever pattern of the distribution is brought about respecting these rules can be regarded as just.

Comparing Carter's to Rawls's approach, I will make three points. The first is that there is no general incompatibility between Carter and Rawls regarding what a just distribution of financial means would constitute. In fact, I will argue that the distributive mechanism that Carter proposes can be seen as generally compatible with Rawls's framework. The second point is that there is, however, a considerable difference in the way that Carter justifies the distributive mechanism he proposes. Carter indeed appeals directly to freedom in order to justify redistributive measures. This appeal is absent in Rawls. The third point I will make is that Carter's argument for a singular right to freedom can provide the Rawlsian with an additional argumentative strategy to justify redistributive measures.

3.1.1 A Singular Right to Freedom

In *La libertà eguale* (2005), Carter explicitly builds on Hohfeld in order to develop the idea that people have a moral right to freedom (Carter 2005, 100-101).¹⁴² When Carter speaks of

¹⁴² If the moral right to freedom were implemented within a legal system that of course would lead to a cluster of Hohfeldian legal rights.

a moral right to freedom what he has in mind is a relation between three elements. According to Carter, “firstly there is a *claim* on the part of an agent, X; secondly there is a correlative *duty* on the part of a another agent, Y; thirdly there is the *empirical freedom* of X the respect of which constitutes the duty of Y” (Carter 2005, 111-112; my translation). According to Carter, the right to freedom is to be understood as the “prescription of a certain *distribution* of empirical freedom (understood as a quantitative attribute), granting to each agent the general claim to a certain *degree* of overall freedom – that is, the claim that no other agent performs an action which would bring the former’s freedom under a given level” (Carter 2005, 113; my translation). Importantly to Carter, the right to freedom has priority when it comes to other goods. However, this priority is to be understood as “a partial priority” (Carter 2005, 124; my translation). This means that the right to freedom is only given priority up to a certain point. Under this view, my right to freedom is respected “as long as the aggregate of my specific freedoms remains greater or equal to the level of freedom to which I have a general right (i.e. a claim)” (Carter 2005, 126; my translation).¹⁴³ In that sense it is a right to *overall* freedom.

What, then, does it mean to include a right to freedom in a liberal theory of justice? Carter interprets the right to overall freedom as a type of “egalitarian libertarianism” or “libertarian egalitarianism”. The libertarian aspect of the right to freedom, to Carter, is that the central right is one to (overall) freedom¹⁴⁴, and not another value. Therefore, this justificatory strategy involves the direct appeal to freedom as an independent ideal. The egalitarian aspect of the right to freedom is the idea “to equalize freedom”, where freedom is understood as “the *de facto* possession of resources – be they external or internal” (Carter

¹⁴³ Note that to Carter this also means that people have the right to do what others deem morally wrong. Indeed, as long as everyone’s right to a certain degree of overall freedom is not violated in the process of performing those actions which some deem morally wrong, people should be able to do what they hold is worthwhile in life (Carter 2005, 126).

¹⁴⁴ According to Carter, building on Hart’s seminal paper “Are there any Natural Rights?” (1955), all the other rights a person has are derivable from a general right to freedom (Carter 2005, 114-117).

2005, 236; my translation). Egalitarian libertarianism, according to Carter, accepts building on Nozick (1974) that the historic entitlement theory – with its three principles of justice in acquisition, in transfer, and in rectification – is essentially the correct basis of justice. However, the three principles are to be interpreted in an egalitarian manner. According to Carter, as regards the principles of justice in acquisition, “the hypothesis is that the only morally acceptable basis of that principle is that of a fundamental right to equal social freedom” (Carter 2005, 246; my translation), and that, because some people have a much bigger share of the resources they are entitled to, there is a “systematic violation of the principle of justice in acquisition” (Carter 2005, 246; my translation).

Thus, to Carter’s mind, egalitarian libertarians often argue for the equalization of resources at the beginning of people’s lives (i.e. once they become of age), so that everyone gets his or her fair share of the natural resources.¹⁴⁵ However, according to Carter, this call for equal freedom is usually accompanied by the affirmation of the principle of responsibility. According to that principle, once people have had “equal starting points” (Carter 2005, 237; my translation) in terms of opportunities they were given at the beginning of their lives (or more likely at the age of maturity), they are responsible for the outcomes of their choices. This means that those who end up worse off than others after the initial equalization of resources do not have any claims vis-à-vis other people to get help from them to become better off.

Now, while Carter is generally in agreement with the thrust of egalitarian libertarianism, he proposes to “limit the principle of responsibility” so that the principle of equal freedom does not only require us to equalize freedom at the beginning of people’s lives (Carter 2005, 238; my translation), but also throughout the course of them. The way this is supposed to work in Carter is by “interpreting the right to freedom as a right to *two minimum*

¹⁴⁵ On the issue of natural resources in left-libertarianism, see Vallentyne et al. 2005.

thresholds of freedom” (Carter 2005, 265; my translation). According to Carter, firstly, “there is the minimum threshold of freedom to which every moral agent is entitled *ex ante*” (Carter 2005, 265; my translation). This is a “threshold to which one is entitled *at the beginning of one’s life* as an agent” (Carter 2005, 265; my translation). Secondly, according to Carter, the right to freedom should be interpreted as also including a right to a second threshold, i.e. a second “minimum threshold of freedom [...] to which every moral patient has an *ex post* right” (Carter 2005, 265; my translation). For Carter, to this second threshold “one is entitled *in the course of one’s life*” (Carter 2005, 265; my translation), and he proposes that “the first threshold be as high as possible consistent with defining some absolute, low level of the second” (Carter 2005, 265; my translation).

Crucial to Carter’s proposal is the distinction between *moral agents* and *moral patients*. To Carter, in order to be a moral agent we first must have the “capacity for choice” in that we are able to set our own ends, and, secondly, we have to have a “minimum degree of social liberty [i.e. overall freedom]” (Carter 2005, 260-261; my insertion, my translation) available to us to have the physical opportunity to actually pursue those ends. Insofar as a person lacks one or both of these elements – the capacity for choice and a certain degree of overall freedom – that person becomes a moral patient (Carter 2005, 263). The idea is that if agents, even through behavior for which they can be held morally responsible become patients, justice imposes on us a moral duty to help them. In Carter, however, this is only the case if it is possible for these moral patients to become moral agents once again. This limits the libertarian principle of responsibility (Carter 2005, 258).

Building on Marc Fleurbaey (1995), Carter provides the example of “Bert” who has opted to engage in risky and negligent behavior and as a consequence is facing severe personal damages. In the example, Bert chose to ride his motorcycle without wearing a helmet, which contributed to him suffering a terrible accident and putting him at risk of losing his life. However, Bert does not have enough resources or insurance to pay for the

life-saving surgery (Carter 2005, 248). Carter believes the principle of responsibility should be limited in its scope in order to enable people like Bert, who have become moral patients, to regain their status as moral agents. To Carter this is so despite the fact that Bert's being a moral patient is a direct result from behavior for which he can be regarded as being morally responsible. Contrariwise, if Bert were only to lose a lot of money in the process of paying for the surgery, and were now merely worse off than before the accident, he would not be entitled to the state's help. In this sense, the second threshold is to be interpreted as a "safety net" (Carter 2005, 267; my translation) that kicks in once an agent has become a patient with the potential of regaining agent-status. Thus, on the contrary to left-libertarian positions that do not restrict the principle of responsibility, a moral patient, in Carter's story, has "a right to be helped in becoming an agent with a minimum of freedom" (Carter 2005, 270; my translation).

Effectively, then, what Carter proposes is to interpret the two thresholds of freedom in terms of a "basic income (at regular intervals) and a basic capital". These financial mechanisms¹⁴⁶ relate in the case of the basic income to those who are patients and in the case of the basic capital to those who are agents (Carter 2005, 279; my translation). The basic capital¹⁴⁷, in accordance with the first threshold, is to be as high as possible and should be paid out in full at a specified age of maturity or during people's transition phase from being a minor to being an adult (Carter 2005, 276-278). The second threshold is supposed to be financed by a mandatory insurance scheme which people are required to take out at the beginning of their lives as agents. The idea is that there would be a "a range of policies offered by various insurance companies, and each agent will be allowed to purchase the

¹⁴⁶ Of course, someone can lack agential qualities in Carter's view not only because of a reduced degree of empirical freedom but also because of lacking the capacity for choice. One could think of a person who is suffering from a psychological issue that needs treatment. However, assuming that the person can find help paying for a therapist's services, financial means can contribute to that person becoming a moral agent, too. In any case, the right to freedom in Carter is spelled out in terms of access to financial means.

¹⁴⁷ Note that Carter refrains from specifying an exact amount (Carter 2005, 279).

policy he or she prefers (with a higher or lower level of coverage)” (Carter 2005, 267; my translation). However, “each acceptable policy will result in a mandatory minimum coverage” (Carter 2005, 267; my translation), which presumably “will include the monetary value of basic health services and a poverty benefit” (Carter 2005, 267; my translation). According to Carter, moral agents have a choice to “adopt low-risk behaviors paying low premiums, or to adopt high-risk behaviors paying high premiums” (Carter 2005, 267; my translation). Therefore, “[t]hose who risk more and fall below the minimum threshold receive more resources as patients than are given to those who do not take risks and do not become patients; but the same alternative of taking risks paying a higher premium, was equally open to those who chose a low-risk life plan instead” (Carter 2005, 267; my translation).

We have seen that Carter, in specifying what the right to freedom comes down to, focuses exclusively on financial means. The theoretical justification for this move is that financial means can serve as a proxy for overall freedom. Recall that conceptually, physical objects are constituents of people’s overall freedom in the sense that they are part of the components of physical action. Hence, given that financial means can be transformed into the possession of physical resources, empirically the amount of them at a person’s disposal determines to a great extent what that person can do, or more specifically what other people do not prevent that person from doing (Carter 1999, 234-236; 2005, 224). Thus, it stands to reason that the more financial means a person has at her disposal the more things she is free to do. Consequently, poor people, it is reasonable to assume, are less empirically free than rich people. Carter, of course, as we have seen, believes that a certain amount of overall freedom is crucial for people to act as agents stipulating and pursuing their own ends in life.

In summation, we have seen that Carter cashes in people’s moral right to overall freedom in terms of an entitlement to a certain amount of capital as well as to a basic income. All of this raises the question as to how Carter’s approach contrasts with the Rawlsian

approach. Indeed, I have argued throughout this dissertation that I regard Carter's approach to the relationship between freedom and justice as posing a challenge to Rawls's approach to it. Yet, how does that picture of justice constructed by Carter contrast to the one developed by Rawls?

3.1.2 Rawls and the Distribution of Financial Means

Before we can answer the question raised at the end of the last section, I shall analyze Rawls's approach to the distribution of financial means. I will show that in order to understand the Rawlsian position on the distribution of financial means, we need to take into account three different principles – the difference principle, the fair equality of opportunity principle, and the fair value of the political liberties principle – that establish a framework of rules for the distribution of financial means in Rawls.

Similarly to Carter, Rawls was also concerned with the distribution of financial means as one important focus of justice. Indeed, in Rawls's account of the primary goods, income and wealth are explicitly listed.¹⁴⁸ Recall further the centrality of the primary goods to the Rawlsian project. Primary goods, to Rawls, are the "various social conditions and all-purpose means that are generally necessary to enable citizens adequately to develop and fully exercise their two moral powers, and to pursue their determinate conceptions of the good" (Rawls 2001, 57). Thus, to Rawls's mind, primary goods are "not things it is simply rational to want or desire, or prefer or even to crave" (Rawls 2001, 58). Instead, "[t]hese goods are things citizens need as free and equal persons living a complete life" (Rawls 2001, 58). To Rawls, then, income and wealth are "generally needed to achieve a wide range of ends whatever they may be" (Rawls 2001, 59).

¹⁴⁸ For the entire list of the primary goods, of which there are five in total, see Rawls 2001, 58-59.

The three different principles that are relevant for constructing Rawls's approach to the distribution of financial means are, belonging to the first principle, the fair value of the political liberties principle (Rawls 1993, 5),¹⁴⁹ and belonging to the second principle of justice, the principle of fair equality of opportunity and the difference principle (Kaufmann 2018, 138). In lexical ordering, as Norman Daniels notes, the fair value principle has priority over the principle of fair equality of opportunity, and the principle of fair equality of opportunity has priority over the difference principle (Daniels 2003, 252). That means that the fair value principle must not be traded off for the principle of fair equality of opportunity or the difference principle. Moreover, the fair equality of opportunity principle must not be traded off for the difference principle.¹⁵⁰

The difference principle stipulates "that however great the inequalities in wealth and income may be, and however willing people are to work to earn their greater shares of output, existing inequalities must contribute effectively to the benefit of the least advantaged" (Rawls 2001, 64).¹⁵¹ To Rawls, if the inequalities present in a society do not satisfy the

¹⁴⁹ Indeed, see Rawls's formulation of the first principle in *Political Liberalism*: "Each person has an equal claim to a fully adequate scheme of equal basic rights and liberties, which scheme is compatible with the same scheme for all; and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value" (Rawls 1993, 5; my emphasis).

¹⁵⁰ On the notion of lexical priority, see Lister 2015 and Nagel 2003, 72.

¹⁵¹ To Rawls, according to the "simplest form of the difference principle, the least advantaged are those who share with other citizens the basic equal liberties and fair opportunities but have the least income and wealth" (Rawls 2001, 65). Note that there is also a wider reading of the difference principle, under which the difference principle, according to Rawls, applies to "differences in citizens' (reasonable) expectations of primary goods over a complete life" (Rawls 2001, 59). Under this interpretation of the difference principle, it follows "that a greater index of primary goods [...] for one group (the MAG [most advantaged group]) is justified only insofar as it adds to the index of the other group (the LAG [least advantaged group])" (Rawls 2001, 62; my insertions). Given that the basic liberties are listed among the primary goods (Rawls 2001, 58), this formulation of the difference principle would suggest that it could also apply to the first principle of justice. This argument of Rawls complicates the notion of lexical priority, for under this reading of the difference principle, it is conceivable that justice, in some situations, may require of us an unequal distribution of the basic liberties. In this context, Rawls argues that "if men, say, have greater basic rights or greater opportunities than women, these inequalities can be justified only if they are to the advantage of women and acceptable from their point of view" (Rawls 2001, 65), and, according to Rawls, this applies "[s]imilarly for unequal basic rights and opportunities founded on race" (Rawls 2001, 65). This is in contrast to the usual formulation of the first principle which, as we have seen, stipulates that each person has an "indefeasible claim to a fully adequate scheme of *equal* basic liberties" (Rawls 2001, 43; my emphasis), or in a slightly different formulation stipulates each person's "*equal claim* to a fully adequate scheme of *equal* basic rights and liberties" (Rawls 1993, 5; my emphasis). What Rawls seems to be trying to establish with the wider reading of the difference principle is that on the path to the fulfillment of the first principle, there may be a temporary application of the difference principle which eventually is to be supplanted by strict equality. Rawls of course argues that unequal basic rights and opportunities "are not now, and it would seem never have been, to the advantage of women or less

difference principle they “are not permissible” (Rawls 2001, 64). Thus, in Rawls, as Norman Daniels notes, equality is established “as a baseline” (Daniels 2003, 247).

Note, however, that Rawls opposes the “doctrine which insists upon an equal distribution of all primary goods” (Rawls 1999, 472). While the basic liberties are to be distributed equally, there is no such requirement for income and wealth. In fact, according to Rawls, the “difference principle is not egalitarian in that sense, since it recognizes the need for inequalities in social and economic organization, of which their role as incentives is but one” (Rawls 2001, 68). The idea seems to be that inequalities in, say, income can incentivize people to do things that are beneficial for the worst-off. For example, in a well-ordered society, doctors may have a higher income than artists. This has the potential of incentivizing people to become doctors, which, in turn, has the potential of raising the life-prospects of the worst-off by making medical care widely available. If it were not for that incentive, perhaps medical care would be less widely available and consequently harder to secure for the least-advantaged members of society.¹⁵²

Rawls’s egalitarianism, thus, commences with the precept that inequalities need to be justifiable to be legitimate, not that they are always unjust. Therefore, according to Rawls, “it is unreasonable to stop at equal division” (Rawls 1993, 282). In fact, Rawls argues that “[t]he basic structure should allow organizational and economic inequalities so long as these improve everyone’s situation, including that of the least advantaged, provided these inequalities are consistent with equal liberty and fair equality of opportunity” (Rawls 1993, 282). According to Daniels, then, the meaning of the difference principle is “that those who

avored races” (Rawls 2001, 65). If that is the case, however, it is not clear why the difference principle should ever apply to the basic liberties. In any case, the notion that the difference principle, on the wider reading, ought to apply to the entire range of the primary goods perhaps requires a reformulation of the principles of justice, or, alternatively, as Rawls has asked himself at one point, “[w]e might also have to reconsider the soundness of the difference principle” (Rawls 2001, 67, fn. 35). For a general discussion of the difference principle, see Van Parijs 2003.

¹⁵² See also Rawls 1999, 67-68. There Rawls argues that inequalities in life-prospects may lead to such benefits as the economic process being “more efficient” and to “innovation proceed[ing] at a faster pace, and so on” (Rawls 1999, 68; my insertion).

are worst off with respect to talents and skills are as well off as they can be” (Daniels 2003, 251), which does not support the notion of “a ‘trickle down’ of gains from inequality” (Daniels 2003, 251), instead, “the difference principle mitigates the effects of the social and natural lottery by requiring a maximal flow downward” (Daniels 2003, 251).¹⁵³

Similarly to the difference principle, the notion of fair equality of opportunity, as the first part of the second principle, is supposed to “correct the defects of formal equality of opportunity – careers open to talents – in the system of natural liberty, so-called” (Rawls 2001, 43). To Rawls, the system of natural liberty is a system where a free market economy is present, and people have “the same legal rights of access to all advantaged social positions” (Rawls 1999, 62). However, in that system, “there is no effort to preserve equality, or similarity, of social conditions” (Rawls 1999, 62), apart from those necessary to allow for a free market economy and formal equality of opportunity. Thus, in the system of natural liberty, “the initial distribution of assets for any period of time is strongly influenced by natural and social contingencies” (Rawls 1999, 62). To Rawls, however, natural and social contingencies cannot be things we can be said to deserve. Hence to Rawls’s mind, we cannot claim that the resulting distribution of assets satisfies the demands of social justice.

Therefore, according to Shlomi Segall, fair equality of opportunity does not only require “the removal of formal barriers of discrimination in the competition for jobs and positions, but also something by way of leveling the playing field in the run up to these jobs” (Segall 2015, 269). The example which Segall provides, inspired by Williams (1962), is “a society in which enlistment to the army carries a lot of prestige and benefits” (Segall 2015, 269) and where “trials for these military positions involve some physical test” (Segall 2015, 270). In such a society, even in absence of formal inequalities, people who “are better fed

¹⁵³ To Rawls, “we do not morally deserve either our initial place in society or our place in the distribution of native endowments” (Rawls 2001, 78). Thus, Rawls believed that factors such as natural assets and historical and social fortune should not determine the distribution of income and wealth. He saw these factors as being an outgrowth of the “natural lottery” (Rawls 1999, 64). For a discussion of that point, see Lindblom 2018.

and thus in better physical shape” (Segall 2015, 270), have an advantage over those who do not have enough food. The principle of fair equality of opportunity is aimed at eliminating a “de facto socioeconomic barrier” of that kind (Segall 2015, 270). To Rawls, then, fair equality of opportunity entails that the “free market system must be set within a framework of political and legal institutions that adjust the long-run trend of economic forces so as to prevent excessive concentrations of property and wealth, especially those likely to lead to political domination” (Rawls 2001, 44).

Finally, the notion of the fair value of the basic political liberties, which stipulates that people ought to have the means to exercise effectively their political liberties (if they so choose), is relevant in this context. Recall, Rawls argues that the “fair value of the political liberties ensures that citizens similarly gifted and motivated have roughly an equal chance of influencing the government’s policy and of attaining positions of authority irrespective of their economic and social class” (Rawls 2001, 46).¹⁵⁴ While everyone enjoys the basic liberties equally *qua* having equal claims to them, “the usefulness of these liberties [...] is not the same for all”. In Rawls, then, the equal political liberties “are to be guaranteed their fair value” (Rawls 2001, 149). In particular, Rawls believes that the political liberties guaranteed by the first principle “lose much of their value whenever those who have greater private means are permitted to use their advantages to control the course of public debate” (Rawls 1999, 198). According to Rawls, then, “to preserve the fair value for all of the equal political liberties” (Rawls 1999, 198), among other things (such as making funds for political parties widely available), “in a society allowing private ownership of the means of production, property and wealth must be kept widely distributed and government monies provided on a regular basis to encourage free public discussion” (Rawls 1999, 198).

¹⁵⁴ In this sense, the fair value principle seems to be a particularly important form of fair equality of opportunity – so important indeed that it is not part of the second principle but integrated into the first.

In summation, Rawls is concerned with the way financial means are distributed for three reasons: (in ascending importance) firstly, because he holds that social and economic inequalities ought to benefit the least advantaged group of society; secondly, because he believes that fair equality of opportunity should not merely be a formal promise but an actual physical reality for people; thirdly, because he believes that political participation should be a real possibility for people who choose to engage in it. These three reasons are reflected in the aforementioned principles, which are, like the entirety of the principles of justice, “designed to work in tandem and apply as a unit” (Rawls 2001, 46, fn 10). Therefore, as Daniels correctly establishes, despite the fact that the difference principle does not establish an “absolute limit on the amount of inequality allowed [...], its combination with the other principles and the priority that is given to them suggest that we would see much less inequality in a society governed by democratic equality than it might seem the principle alone would allow” (Daniels 2003, 252).

Crucially for us here, it is not actually the case that Rawls tries to determine the pattern of the distribution of social and economic inequalities, such as the distribution of income and wealth, by stipulating the three principles in question. Instead, the idea is that if the principles of justice “are satisfied by the basic structure, and given that all legitimate expectations and entitlements are honored, the resulting distribution is just, whatever it is” (Rawls 2001, 72). Thus, as Scheffler notes, Rawls treats “the issue of distributive shares as a matter of pure procedural justice” (Scheffler 2003, 444). In consequence, according to Scheffler, we can neither apply the principles of justice “to individual transactions considered in isolation [...]. Nor can the justice of an overall allocation of goods be assessed independently of the institutions that produced it” (Scheffler 2003, 444).

Finally, the three principles analyzed here belong to different stages of Rawls’s four-stage sequence for the implementation of the principles of justice. The fair value principle is part of the first principle of justice and thus involved in stimulating the constitutional

essentials (Rawls 1999, 197, 327). Contrariwise, the principle of fair equality of opportunity and the difference principle belong to the legislative stage (Rawls 1999, 175). Note that there is an openness in Rawls regarding how exactly the rules established by these principles are to be implemented in a well-ordered society. This is the case in particular for the second principle, which, according to Rawls, “bears on all kinds of social and economic legislation” (Rawls 2001, 48). Yet, also in the case of the so-called constitutional essentials covered by the first principle, despite agreement “in the main outlines” of those essentials, it is not possible to gain agreement “in every detail” (Rawls 2001, 49). Therefore, how the demands these principles make are to be fulfilled in detail is, to a large degree, an outcome of a justice-conforming democratic process.

3.1.3 Contrasting Rawls and Carter

In this section, I will outline what the main upshots of the comparison between Carter and Rawls are. I will raise four points in doing so.

The *first* is that there is no general incompatibility between Carter and Rawls regarding what would constitute a just distribution of income and wealth. In order to drive home this point, it is necessary to regard Rawls’s approach to the distribution of financial means as a framework of rules with which the distributive mechanism proposed by Carter is generally compatible.

When is a distributive mechanism compatible with Rawls’s framework? According to my proposed interpretation, the range of distributive mechanisms compatible with Rawls’s position lies somewhere between utilitarianism, understood as aiming at the maximization of the aggregative levels of well-being, and strict equality, conceived of as aiming at the equalization of all the inequalities. Rawls famously argued that in utilitarianism “there is no reason in principle why the greater gains of some should not compensate for the

lesser losses of others; or more importantly, why the violation of the liberty of a few might not be made right by the greater good shared by many” (Rawls 1999, 23). In that sense, Rawls rejects utilitarianism arguing that it “does not take seriously the distinction between persons” (Rawls 1999, 24). On the other hand, Rawls rejects strict equality, understood as the precept that “all social primary goods, including income and wealth, should be equal” (Rawls 1993, 281), because he thinks it an unreasonable position if certain inequalities could “improve everyone’s situation, including that of the least advantaged” (Rawls 1993, 282).¹⁵⁵

Rawls’s criticism of utilitarianism is certainly plausible. If utilitarianism is indeed defined as a purely aggregative principle that allows for someone’s loss in well-being to be made up for by someone else’s gain thereof, this runs afoul our notion that people have individual entitlements. However, it is not clear to me that the difference principle actually rules out all forms of what we may call strict equality. For one thing, perhaps in a society where all the primary goods, including income and wealth are distributed equally, the least advantaged group is as well-off as possible. Recall that equality is the baseline in Rawls conception of justice (Daniels 2003, 247). Thus, inequalities should only be allowed if they render the worst-off better off than in a state of equality. If it can be shown that the worst-off are in the best position they can be under strict equality, then this should satisfy the difference principle. Indeed, Rawls’s argument is that once the principles of justice are satisfied, “the resulting distribution is just, whatever it is” (Rawls 2001, 72). Rawls establishes rules for judging the justice of the process that brings about distributions, not for singling out one particular pattern of them.

Secondly, favoring a principle of strict equality does not require us to commit to a principle that prescribes constant equalization. A principle of strict equality could, in fact, be interpreted as prescribing equal starting points requiring strict equality at one specified

¹⁵⁵ The basic liberties should, of course, be equally enjoyed by everyone (see fn. 19).

point in time, while accepting certain unequal outcomes afterwards. Of course, Rawls believes, as we have seen in the last section, that strict equality would prevent efficient social and economic arrangements and that unequal prospects in income can serve as incentives to do things that are valuable for society such as, for example, becoming a doctor. However, it is not immediately obvious that all forms of strict equality would violate the prerequisites of incentive-setting. Incentives could still be present in a system where there is some form of strict equality that does not require constant equalization.¹⁵⁶ It thus depends on one's definition of efficiency.

In particular, it is not clear that *justice as fairness* is incompatible with the distributive mechanism established by the right to freedom developed in Carter. Although Carter argues that the right to freedom “favors equality in a strict sense” (Carter 2005, 275; my translation) – which Rawls as we have seen did not believe in – Carter's right to freedom certainly allows for inequalities. What is to be guaranteed in an equal fashion to every moral agent is a certain amount of capital at the age of maturity. However, Carter does generally accept the libertarian principle of responsibility which leads to different financial outcomes in people. He proposes to limit the principle of responsibility so as to make it possible for someone who has become a moral patient to become a moral agent once more by providing the patient with a minimum degree of overall freedom (i.e. a basic income financed through a compulsory insurance scheme) (Carter 2005, 258). Yet, he does not state that all the income and wealth differences between people are unjust, and, indeed, different economic outcomes are to be expected under Carter's distributive mechanism. Of course, these outcomes would need to be consistent with the next generation having equal starting points once they reach moral agent status, and the economic outcomes would have to allow for the security net

¹⁵⁶ I am not here arguing that we should espouse such a principle, I am merely making the point for the logical possibility that some form of strict equality can be best for the least-advantaged group and not violate the precept of efficient social and economic organization. Generally speaking, the more equalization is pursued, it is reasonable to expect, the more this poses a hindrance to social and economic organization.

specified by the second threshold.¹⁵⁷ However, this is not the same as arguing that all the economic outcomes need to be equalized all the time. In fact, such an approach would do away completely with the principle of responsibility favored by Carter.

It remains to be assessed whether the right to freedom perhaps violates the fair value and the fair equality of opportunity principles. Yet, in the case of these two principles it is implausible that the right to freedom would be incompatible with Rawls's position. Instead, Carter's right to freedom would provide people an actual degree of physical opportunity to do things. Recall that Rawls argues that the system of natural liberty is not sufficiently just because within it "the initial distribution of assets for any period of time is strongly influenced by natural and social contingencies" (Rawls 1999, 62). The distributive mechanism proposed by the right to freedom would ensure that this is not the case with regard to financial means, for it (temporarily) equalizes the distributions of assets providing people with economically equal starting points.

Similarly, the fair value of the political liberties requires that people similarly gifted and motivated should "have roughly an equal chance of influencing the government's policy and of attaining positions of authority irrespective of their economic and social class" (Rawls 2001, 46). As in the case of the fair equality of opportunity principle, the mechanism proposed by Carter would impede people from starting off better in financial terms than others. Therefore, as far as economic privilege translates into the potential for political and

¹⁵⁷ At one point, Carter argues that the "proposal of the two thresholds makes it impossible that someone exceeds (without injustice) the prescribed level of (overall) freedom, precisely because this level of freedom represents equality in a strict sense" (Carter 2005, 274-275; my translation). This suggests that there is a limitation to the amount of overall freedom (understood as the possession of financial means) people could accumulate during their lifetime. How exactly the upper limit is to be justified is not clear to me, however. In any case, presumably Carter's scheme requires a large amount of taxation to guarantee equal starting points across generations. So perhaps this would in practice mean that the amount of financial means people could accumulate would have a natural upper limit. In any case, even if there is an upper limit, there would be variation in the economic outcomes between it and the sufficiency threshold. Hence, conceptually there should be room for economic incentives, which is vital for economic efficiency. Again, the question is how exactly we ought to define economic efficiency.

social clout, other things being equal, people should have the same chance to attain positions of political and social power under Carter's approach.

Clearly, what I have provided here is only a rough account of the compatibility between Carter's approach to the distribution of financial means and how it contrasts with Rawls's. The purpose was not to cover all details but to show that Carter is proposing a mechanism that could be of interest to the strongly egalitarian-minded Rawlsian.

The *second* upshot of the comparison is that the way that Rawls and Carter justify their respective egalitarian positions on the distribution of financial means is quite different between them. However, both converge on some form of liberal egalitarianism.

Despite the fact that both authors clearly converge on the relevance of the way financial means are distributed, there is the obvious difference in that in Rawls there is no direct appeal to freedom and its independent value to be found in a way that would satisfy Carter. Carter believes that we should understand freedom as an empirical opportunity concept and should reserve a prominent place for freedom's non-specific value in a liberal theory of justice. In contrast, as demonstrated in Chapter I, Rawls argues that with *justice as fairness* "[n]o priority is assigned to liberty as such, as if the existence of something called 'liberty' has a preeminent value and is the main if not the sole end of political and social justice" (Rawls 1993, 291-292). Indeed, when Rawls speaks of the "basic liberties", as we have discussed, Rawls does not have in mind an empirical conception of freedom. Instead, when he employs the term liberty, he means liberty in a normative sense, and he aims to refer only to some highly important particular liberties.

However, notwithstanding the use of different conceptions of freedom, both authors espouse some form of liberal egalitarianism. More specifically, both are not only concerned with people having a cluster of liberal-democratic rights but also with them having the physical opportunity to make use of them. Thus, there is a convergence in terms of the broad picture both authors are trying to paint about what justice requires. One way to think about

this is that Rawls and Carter choose different inputs for their respective theories of justice. Carter's is freedom-based, hence freedom as such has an important explanatory status in Carter. Rawls is not advocating for a freedom-based theory of justice. Thus, freedom as such is not an input in Rawls's theory of justice. However, at least as regards Carter's proposal of including a right to overall freedom, the output of Carter's freedom-based theory of justice is similar to the one generated by *justice as fairness*. Put differently, one can use different conceptual tools as input, and generate a similar output in terms of what is required for a society to be just.¹⁵⁸ Therefore, if one is an egalitarian and is concerned with the distribution of financial means in society, the frameworks of both authors provide one with a way of arguing for liberal egalitarianism. Moreover, it should in principle be possible to argue for the two-threshold approach to the distribution of financial means proposed in Carter by interpreting the principles of justice in a strongly egalitarian manner. Indeed, perhaps they require exactly the mechanism argued for by Carter.

The *third* upshot of the comparison is that Carter's approach enables us to make a freedom-based argument for redistributive measures. However, this is not necessarily an argumentative advantage.

One may say, building on Carter, that one weakness of Rawls's approach is that it cannot appeal to a more egalitarian distribution of financial means by arguing that this would equalize the amount of freedom people have in society. Thus, Rawls's argument for redistributive measures is never directly freedom-based. We could perhaps follow that by appealing to freedom in making such an argument, we can make a stronger case for redistributive measures by pointing to the direct effects they would have on the distribution

¹⁵⁸ I am simplifying things somewhat here. Based on the argument for the non-specific constitutive value of freedom, a singular right to freedom should also include an entitlement to freedoms that are of disvalue when exercised such creating the environment in which people can exercise the declinatory aspect of their autonomy. In this context, recall the distinction of the value of having the freedom to ϕ and the value ϕ -ing (Kramer 2017, 202) explained in Chapter III. However, this distinction does not carry much weight in Carter's argument for the right to freedom developed in *La libertà eguale* (2005).

of freedom. Presumably, then, this could be regarded as some kind of argumentative advantage. Perhaps a freedom-based proposal for certain redistributive measures is argumentatively more convincing than a proposal based on notions such as the fair value of the political liberties, the fair equality of opportunity, and the difference principle in order to do so.¹⁵⁹ Thus, we might conclude that we should use Carter's approach and make the argumentative shift to a freedom-based theory of justice because of its argumentative strength.

While this can help liberals to provide additional reasons for justifying people's egalitarian entitlements to financial means, this probably does not help in convincing many people who are opposed to liberal egalitarianism in the first place. In other words, even if there is a direct appeal to freedom, some will still not like the resulting picture of justice because they do not appreciate the specific brand of liberalism advocated for. One such example can be found in F.A. Hayek's *The Road to Serfdom* (2001 [1944]). In this work, Hayek argued against defining freedom in terms of the possession of wealth precisely because it allows to draw distributive egalitarian conclusions. Hayek rejected what he called the new definition of freedom that equates freedom with wealth because it allowed socialists to demand equal distribution of wealth by appealing to the notion of equal freedom: "The demand for the new freedom was thus only another name for the old demand for an equal distribution of wealth. But the new name gave the socialists another word in common with the liberals and they exploited it to the full" (Hayek 2001 [1944], 26-27). Of course, Hayek famously argued in this work that "the rise of Fascism and Nazism was not a reaction against the socialist trends of the preceding period, but a necessary outcome of those tendencies" (Hayek 2001 [1944], 4). Hence, he prompted us to be liberals "of the old type" (Hayek 2001

¹⁵⁹ There is, of course, an appeal to freedom in Rawls most noticeable in the fair value of the political liberties principle, however it is somewhat of an indirect appeal. The reason for this is that the fair value principle does not aim to distribute freedom directly but instead the means to make effective use of freedom.

[1944], 30), to whom freedom had meant “freedom from the arbitrary power of other men” (Hayek 2001 [1944], 26).¹⁶⁰

The *fourth* upshot is that Carter’s proxy strategy does not tell the whole story about overall freedom. There will be other things that affect overall freedom, and the relationship between financial means and overall freedom is exposed to some contingencies.

First off, if we grant that money can have an effect on people’s motivations which, in turn, influence their actions, so can other things. For example, in a segregated society in which one group has more rights than the other, money may not be the only thing that helps explain why members of the subjugated group are exposed to more interference than members of the dominant group. It stands to reason that what we would see in such a society is members of the dominant group interfering with members of the less dominant group, not because the latter attempt to take control over physical constituents of action without exchanging money for them but because the former think their superior status entitles them to interfere with members of the subjugated group. Thus, a member of the dominant group can likely take control over more physical constituents of action than a member of the subjugated group, independently of any financial concerns. Indeed, imagine that in the segregated society, there are spaces reserved to the members of the dominant group. In such a society, it is likely that if a member of the subjugated group attempts to enter a space reserved to the members of the dominant group, he will be physically removed from it, even if he is willing to pay for access. What motivates the members of the dominant group to constrain the freedom of the member of the subjugated group is not the latter’s lack of money, but his perceived lack of an entitlement to enter the space of the dominant group.

¹⁶⁰ Note that Hayek spoke of the new freedom as defining freedom in terms of the possession of wealth. Carter building on Cohen (Cohen 1995, 47-59) does not believe that wealth as such constitutes freedom but that the possession of wealth is empirically correlated with less interference (Carter 1999, 234-236). I am thankful to Ian Carter for pressing me on this point. At any rate, I do not think that this changes the validity of my argument here. The point is that there will be thinkers who object to the freedom-based argument precisely because they are against egalitarian redistribution and/or because they espouse a different conception of freedom.

In more general terms, then, what does the major lifting in Carter's proxy-strategy argument is not money itself but people's dispositions to interfere. Thus, we should keep in mind that not only will there be other things that influence people's dispositions to interfere with one another (such as, for example, group status) but plausibly we cannot fix once and for all the effect financial means have on everyone's levels of overall freedom.¹⁶¹ Therefore, my point is that there are likely many reasons why people are predisposed to interfere with one another, money is but one of them. However, Carter reduces the singular right to overall freedom to an entitlement to financial means, which paints a limited picture about overall freedom.¹⁶²

Notwithstanding these points, it remains plausible that the amount of money a person has at her disposal can provide us an important insight into her levels of overall freedom. It is almost guaranteed that people who have less money will have a harder time taking control of certain constituents of actions and are thus empirically less free, yet we should be mindful of the contingencies in that relationship.¹⁶³

In summation, moving toward a freedom-based theory of justice by including a singular right to freedom should not strike the Rawlsian as an altogether outlandish proposal. Rather, the resulting picture of justice is quite similar to the one developed by Rawls. Moving toward a freedom-based theory of justice in the manner discussed here has the advantage of allowing a direct appeal to freedom, which can aid in making a stronger case for redistributive measures. In this sense, I regard overall freedom as being in principle able to complete *The Determination Task* by aiding us to paint a plausible picture about what justice requires. However, this will likely not convince anyone who does not appreciate the resulting

¹⁶¹ This appears to be so also in societies that are not segregated. For example, a poor person entering a bakery attempting to take a loaf of bread without paying may induce the baker to wrestle the poor person to the ground and thus constraining the former's freedom. However, it may equally well motivate the baker to gift the loaf of bread to the poor person and in the spirit of charity to gift him also a bottle of water, thus effectively increasing the poor person's overall freedom.

¹⁶² It goes without saying that a proxy is only as good as the thing it is a proxy for. Insofar as one remains unconvinced by Carter's conception of freedom, the proxy strategy will have little appeal.

¹⁶³ I am grateful to Ralf Bader whose criticism motivated me to draw the fourth upshot.

liberal egalitarian picture of justice, and, next to financial means, there are other factors that seem to influence the distribution of overall freedom in society. Thus, it would seem appropriate to expand the right to freedom beyond an entitlement to a financial means.

3.2 The Second Way to a Freedom-Based Theory of Justice

Apart from incorporating a singular right to (overall) freedom, as Carter proposes in *La libertad eguale* (2005), one can also accord overall freedom with a yet more fundamental role in the justification of rights. The idea is to assess the effect the entire set of rights would have on the distribution of overall freedom. In that sense, we are taking literally Carter's suggestion that "we ought to be able to defend a particular *set* of rights on the ground that it is good for freedom" (Carter 2021, 137; my emphasis). We are thus using overall freedom as a criterion for the evaluation of the entire set of rights (i.e. an *across-the-board criterion*). Similarly to the Moral Powers Test in Rawls,¹⁶⁴ the idea is that there would be an Overall Freedom Test for the justification of a set of rights. In what follows, I shall explore how we could make sense of the idea. I say "explore" here intentionally because the idea itself is not very developed in Carter. It appears that it usually comes up where Carter attempts to defend freedom as an independent ideal, yet it is not clear what exactly would be entailed by it (Carter 2011, 491; 2015, 291; 2021, 137). Ultimately, I will argue that there are some concerns when trying to use overall freedom as such a test for the justification of a set of rights.¹⁶⁵

¹⁶⁴ There are, of course, two methods for drawing up the list of basic liberties in Rawls: one is analytical; the other is historical (Rawls 2001, 45). I am here only concerned with the analytical method.

¹⁶⁵ I will focus mainly on what may be called basic rights. The main example will be the right to freedom of speech. Moreover, the discussion will be centered around what Hohfeld called claim-rights, given that what is at issue here are normative claims to degrees of overall freedom.

3.2.1 Rights and the Interest in Overall Freedom

As established, Carter argues that a set of rights should be good for overall freedom. In this section, I will develop an account of how a set of rights can be good for overall freedom building on Hillel Steiner.

In this context, it is important to get clear on what the relationship between rights and overall freedom is. We had touched upon this relationship in Chapter II when analyzing Cohen's criticism of Nozick, where the former argued that "private property, like any system of rights, pretty well *is* a particular way of distributing freedom *and unfreedom*" (Cohen 2011, 152). We will here, however, focus mainly on Hillel Steiner's work who in a similar spirit argues for "understanding rights as claims to *freedom*" (Steiner 1994, 210). One of the reasons for focusing on Steiner instead of Cohen is that the former advances a pure negative conception of freedom of which, as I argued in Chapter III, Carter's conception can be regarded as a necessary extension. Another reason is that the analysis of the relationship between freedom and rights takes center stage in Steiner's account of justice. What, then, does it mean that rights are claims to freedom, as Steiner suggests?

The idea is the following. Take the example of me having a rightful title to my house. In what sense is that a normative claim to freedom? It is a claim to freedom in the sense that it gives me an entitlement to the physical components constituted by that house. The physical components, in turn, are then constituents for a number of freedoms that I have at my disposal. We developed the idea that actions have physical components, the possession of which is essential for our being free to pursue them, in Chapter III. The gist is that by employing this perspective, freedom is about the unimpeded possession of physical components of action. To Steiner, as we have seen, "I'm unfree to do an action, [...] if control of at least one of its physical components is actually or subjunctively denied to me by another person" (Steiner 1994, 38-39). The way this connects to rights is that from Steiner's vantage point, "rights operate to prescribe distributions of pure negative freedom" (Steiner 1994, 58).

For example, your right vis-à-vis me of me making a flower-delivery to you, is reducible to your “property right in the physical elements [or “components”] of that action” (Steiner 1994, 99; my insertion). The more such rights you have the more normative claims you have to negative freedom.

Now, I argued in Chapter III that overall freedom is a natural extension of Steiner’s account of pure negative freedom¹⁶⁶ in that we can regard overall freedom as the *expected undisturbed continuous possession of physical components of action*. Employing this perspective, rights do not only establish a claim to singular freedoms, but also to entire sets of compossible freedoms. For instance, discharging my duty vis-à-vis you to deliver the flowers is a precondition not only for the action of you receiving the flowers from me, but also for entire sets of actions that you may have, such as your placing the flowers into a vase and presenting them to your wife.¹⁶⁷ Note that rights, from this perspective, serve as a *normative* claim to freedom. Thus, it is of course always possible that people fail to respect other people’s rights by not discharging their duties.¹⁶⁸ Indeed, if you never receive the flower-delivery from me, you will miss out on certain freedoms. However, assuming a functioning legal system, rights should have a decent chance of being respected, and, if not, ex post enforcement and/or compensation can be expected.

That being said, how can rights be good for overall freedom? They can be good for overall freedom by conferring upon the right-holder a claim, i.e. normative protection, to more freedom rather than less. Indeed, given the argument of Chapter III, you can have more or less freedom at your disposal. It thus stands to reason that the bigger the physical extent of action protected by a right, the better it does in protecting the interest in overall freedom.

¹⁶⁶ In that sense, it is not surprising that the modifications which Carter has proposed to the conception of freedom have been subsequently accepted by Steiner (Carter & Steiner 2022).

¹⁶⁷ You receiving the flowers is, of course, not a sufficient condition for all the possible option sets of which the flowers are a part. Other physical components of action will be required, too.

¹⁶⁸ Note that for this argument to work, people need to have Hohfeldian claim-rights that “vest” certain privileges with duties. As we have seen in section 2, having a privilege does not imply that it is impermissible to interfere with the exercise of that privilege.

In principle, rights will, thus, protect overall freedom to different degrees. For example, your having rightful possession of a yacht does more for your overall freedom than, say, you having rightful possession of a paper cup. Moreover, if we solely consider our fundamental interest in overall freedom (bracketing for the moment other interests we might have), we should be able to produce a ranking of different rights, and based on this, of entire sets of rights regarding the extent of overall freedom to which they give a claim.¹⁶⁹ Given the interest we have in having overall freedom at our disposal, we have a reason to choose set of rights *a* over set of rights *b*, if *a* protects more overall freedom than *b*. Similarly, we have a reason to prefer right *x* over right *y*, if *x* protects more overall freedom. Call this the Overall Freedom Test.

In summation, the central upshot of my argument is that asking how well a set of rights does in terms of providing us with overall freedom requires us to think of rights in terms of normative claims to degrees of overall freedom.

Before we will highlight some of the challenges associated with this view some clarifications are in order. My main concern is that moving toward a freedom-based theory of justice in the sense developed here does not simply imply a Steinerian approach to justice. While it does imply understanding the claims conferred by rights as property claims to degrees of freedom – an idea expressly inspired by Hillel Steiner’s work – it does not follow that we have to espouse many of the other conclusions that Steiner advances in *An Essay of Rights* (1994).

For one thing, Steiner famously argued for the “*Law of Conservation of Freedom*” (Steiner 1994, 52). The idea is that “personal liberty is a zero-sum game” and thus “not a variable social magnitude” (Steiner 1994, 54). Put differently, Steiner believes that the total amount of freedom in society is constant. Thus, if I gain some amount of liberty, you miss

¹⁶⁹ How the overall-freedom ranking works we have discussed in section 1.4 and section 4.2 of Chapter III.

out on that exact amount. The reason for espousing this view is that the number of physical objects that can possibly be constituents of our freedom is assumed to be constant by Steiner. Thus, if you gain access to one of them, I lose that very same access. However, one of the ways this argument fails, as Carter notes, is that it does not take into account that people's dispositions to interfere with one another influences the total amount of freedom available (see Carter 1999, 261-263 ; 2009A, 169). For instance, suppose that there are three agents and one object *x*. If none of the agents desires *x* it is true, according to Carter, "of *each* of the three agents that, *were* she to attempt to make use of *x*, she *would not* be prevented by any other agent from doing so. If, on the other hand, all three agents were to desire to use *x*, and consequently were to attempt to use *x*, only one would succeed in doing so. In this second world, unlike in the first, we can be sure that two of the agents are unfree to make use of *x*" (Carter 2009A, 169).

Another way in which this perspective here developed does not have to be Steinerian is that we have so far supposed the Interest Theory of Rights. Contrariwise, Steiner is well-known to have defended the Will Theory of Rights (or "Choice Theory of Rights") according to which "a right exists when the necessary and sufficient condition, of imposing or relaxing the constraint on some person's conduct, is another person's choice to that effect" (Steiner 1994, 57-58).¹⁷⁰ Thus, according to Steiner, the central thesis of the Will Theory is "that rights are claims or immunities to which are attached powers of waiver and enforcement over their correlative constraints" (Steiner 1994, 73).¹⁷¹ However, Carter's argument for the value of overall freedom can be associated with the Interest Theory of Rights which holds that claim-rights entail duties and duties protect interests (Simmonds & Neoh 2022, 347). Indeed, according to Carter, "[s]aying why freedom is valuable in this sense appears to amount to saying why it is in people's *interests* to have freedom" (Carter 2009A, 171), while

¹⁷⁰ For a discussion of the difference between the Will Theory and The Interest Theory of Rights, see Simmonds & Neoh 2022, 344-349.

¹⁷¹ For a criticism of the Will Theory and a defense of the Interest Theory, see Raz 1986 and Kramer 1998.

to Carter “the whole idea of the Will Theory is that the nature and grounds of people’s rights prescind from their interests: the rights one holds are powers over duties in others, not protections of one’s interests” (Carter 2009A, 171). In fact, as we have seen in section 2 of Chapter III, Carter has placed considerable importance on trying to convince his readers that we should acknowledge the fundamental interest people have in overall freedom. Thus, much of what Carter says about overall freedom and its value is more easily associated with the Interest Theory than with the Will Theory.¹⁷²

Finally, Steiner famously argues that we should “want to know what must be true of a set of rights for it to be a compossible set” (Steiner 1994, 88). In fact, to Steiner we can only have a set of rights if that set is compossible, which in turn implies that we do not have any conflicting duties. The compossibility of rights, according to Steiner, requires that the only rights we can have are “forbearance duties” in other people (Steiner 1994, 99). Therefore, to Steiner, all the rights that people can possibly have require necessarily only the dischargement of what we have earlier called negative duties. However, as Carter notes, the requirement of compossibility has come under fire for “imposes[ing] too high a price” (Carter 2009B, xvi). For instance, Matthew Kramer argues that “[a] theory of justice can countenance the existence of conflicting legal duties while remaining logically impeccable” (Kramer 2009, 205) and that “there can sometimes arise a situation in which the shouldering of two conflicting legal duties by somebody is maximally fair to everyone involved” (Kramer 2009, 205-206). Thus, there is no reason in considering the second way of moving toward a freedom-based theory of justice to assume either that there are no positive duties or that rights must not conflict with one another.

In summation, while I view the second way of moving toward a freedom-based theory of justice to regard rights as claims to freedom, which is one of the key ideas advanced

¹⁷² In 2009A, Carter, however, discusses how overall freedom and the non-specific value can still play an important role in developing an argument for the Will Theory of Rights.

in Steiner's *An Essay on Rights* (1994), this does not mean that the second way cannot diverge substantially from Steiner's theory of justice.

3.2.2 The Challenges of the Second Way

In this section, I will highlight some of the challenges associated with this second way of moving toward a theory of justice. The first is that taking the idea seriously requires that we actually measure amounts of overall freedom. The second is that despite the fact that we do not have the required measurements at our disposal, we have some conceptual reasons to believe that certain usually considered to be highly important rights such as the right to freedom of speech would score very poorly on the Overall Freedom Test. This means that the Overall Freedom Test may fail to be in keeping with our normal judgments about the importance of certain rights.

The *first* challenge is that employing the Overall Freedom Test as developed here makes the judgments about the importance of rights dependent on actual measurements of overall freedom. This means, first of all, that if there are problems in the measurement theory put forward by Carter, then this is a serious problem for the second way of moving toward a freedom-based theory of justice. This would be the case more so with the second than with the first way of moving toward a freedom-based theory of justice. The reason for this is that the first way essentially relied on what may be called a proxy-strategy. As we have seen, Carter makes use of the idea found in Cohen that "the lack of money *is* (a form of) lack of freedom" if we understand freedom as non-interference (Cohen 1995, 57-58). Thus, he does not have to be concerned with direct measurements of overall freedom for the purposes of spelling out what his singular right to freedom requires. He can measure the proxy instead.

As regards the second way of moving toward a freedom-based theory of justice, it seems, there is no such proxy available. For, in this case, we are more directly concerned

with the actual packages of overall freedom to which rights confer an entitlement. Giving once again Carter's theory of measurement the benefit of doubt, the problem is that in absence of such calculations the Overall Freedom Test cannot be properly employed. Thus, at this point we have to recognize the clear limits that Carter's approach poses to us determining what justice requires from the comforts of our armchairs. How well a set of rights does in terms of overall freedom is simply not conclusively ascertainable without the actual measurements.

This being said, however, there are some conceptual conclusions that can be drawn in this context, which leads me to the *second* challenge. The very nature of the Overall Freedom Test requires that the entire set of rights is supposed to be good for overall freedom. This implies, I have maintained, that rights that confer a normative claim to less overall freedom are not as important as those that provide higher amounts of it. Yet, this gives rise to the problem that the right to freedom of speech plausibly does not score very highly on the Overall Freedom Test.

Indeed, given that under Carter's approach, extents of action are essentially constituted by possession of physical objects within a certain spatial-temporal unit, the more physical objects I can make use of, the vaster the physical space in which I can do so, and the longer I can engage in making use of those objects in physical space, the freer I am. If this is how we define overall freedom, then, as Carter admits, "[f]reedom of speech, for example, would appear to be represented by the empirical approach as contributing very little to our overall freedom, given that the exercising of one's freedom of speech involves only small movements of one's tongue and vocal chords" (Carter 1999, 205). On the other hand, according to Carter, "the freedom to start an avalanche might appear intuitively to be over-represented by the empirical approach in terms of the amount it contributes to one's overall freedom; the physical magnitude of an avalanche is very great, whereas some might feel intuitively that the freedom to start an avalanche counts for little in terms of overall

freedom” (Carter 1999, 205). Thus, we must return the highly counterintuitive verdict that from the perspective of our interest in overall freedom, freedom of speech, because it is less physically extensive a freedom, is less important than the freedom to start an avalanche. Therefore, it is unlikely that a right to overall freedom would do very well on the Overall Freedom Test, for it does not protect much overall freedom. Comparatively, however, a supposed right to starting avalanches might do much better.

However, Carter tries to mitigate the conclusion that freedom of speech does not contribute much to overall freedom by arguing that “[w]here agent A is rendered unfree to speak, [...] there is very likely to be a great reduction in A’s freedom *in an overall sense*” (Carter 1999, 206). The argument is that if freedom of speech is curtailed by enforced restrictions, this means that once people express themselves freely – say, against the political regime – they will very likely face consequences in terms of a reduction in overall freedom after the fact. As established in Chapter III with regard to the logic of compossibility of sets of freedoms, “to prevent the act-set ‘saying x at time t and walking down the street at $t+1$ ’ is to prevent *all* of the act-sets which, however large, include these two actions among the members” (Carter 1999, 206). Thus, Carter makes the attempt to argue that if freedom of speech is blocked, then all the sets of freedoms that require freedom of speech as one of the conditions for their existence are rendered impossible, too. Thus, the hypothesis is that freedom of speech provides a lot of overall freedom in an indirect way, as a member of larger sets of freedoms. If that is the case, then freedom of speech might be of importance in fostering overall freedom after all. Thus, by taking into account the indirect effects of freedom of speech on levels of overall freedom, a right to freedom of speech might in fact do quite well on the Overall Freedom Test.

Despite all that, as Matthew Kramer has demonstrated convincingly in *The Quality of Freedom* (2003), Carter's argument outlined above commits an *ignoratio elenchi*.¹⁷³ Indeed, according to Kramer, what Carter needs to uphold in order to establish freedom of speech as contributing a lot to overall freedom is "the thesis that a person's possession of sundry freedoms-of-speech will have contributed substantially to her overall liberty" (Kramer 2003, 459). Instead, what Carter argues for in effect "is the thesis that the removal of sundry freedoms-of-speech from a person will usually derogate substantially from her overall liberty because the removal will usually also take away many of her other freedoms" (Kramer 2003, 459). Thus, according to Kramer, Carter "presents a claim about what is usually or typically the case rather than about what is always the case" (Kramer 2003, 459). Thus, at a conceptual level we cannot conclude definitively that freedom of speech provides us with a particularly high amount of overall freedom.

Moreover, I shall add that even if we were successful in demonstrating conclusively that freedom of speech provides much more freedom indirectly than directly, this still does not tell us why we should prefer freedom of speech over the freedom to start an avalanche. Indeed, the sets of freedoms of which the freedom to start an avalanche is a member still may yield more physical space of action overall than those of which freedom of speech is a member. Thus, the former would still yield more overall freedom than the latter. If that is the case, which we cannot rule out, the problem simply reappears, and we have no grounds to favor the sets of freedoms of which freedom of speech is a member over the sets of freedoms of which the freedom to start an avalanche is a member.

Furthermore, Carter himself acknowledges that there are situations possible in which a restriction on freedom of speech is not accompanied with a great reduction in overall freedom. According to Carter, "one can think of restrictions on freedom of speech that are

¹⁷³ Note that Kramer's criticism of Carter is not made in the context of the individuation of rights. Kramer's remarks regard the way we should think about having overall freedom.

not accompanied by the removal of other freedoms: some laws may restrict specific freedoms in a way analogous to so-called smart bombs, eliminating only certain specific targets while leaving all other freedoms intact” (Carter 1999, 207). In this context, one might think of a political system which allows almost all freedoms instead of freedom of speech – maybe with the pretext that the latter stands in the way of efficiency – and would consequently provide high extents of overall freedom. Put differently, the problem we have is that we want to say that in the interest of freedom it is impermissible to restrict certain freedoms, and what we have in mind are actions such as speaking one’s mind freely in various situations. However, it appears like we cannot do this employing Carter’s approach.

Another potential problem of the second way of moving toward a freedom-based theory of justice is that choosing a set of rights which provides the most overall freedom would make it logically possible to trade off political rights for economic ones (or *vice versa*), provided that such a trade-off would lead to people receiving normative protection of more overall freedom than would otherwise be the case. This is because we indeed do not really know how much overall freedom rights protect, yet we must be open to the possibility that a set of rights which are not in keeping with liberal democracy score more highly on the Overall Freedom Test.

In summation, it seems there are good reasons to make us conclude that overall freedom cannot play the fundamental role as suggested by the second way of moving toward a freedom-based theory of justice.

3.2.3 Some Reflections on the Second Way

When analyzing the first way of moving toward a freedom-based theory of justice, I contrasted Carter’s proposal for a singular right to freedom with Rawls’s approach to the distribution of financial means. Here I will not pursue the same strategy. The reason for this

is that my analysis of the second way has been explorative in nature, and it is not clear whether the Overall Freedom Test gets off the ground at all. I will thus confine myself to some general reflections on the matter.

Firstly, the original attraction of constructing the Overall Freedom Test is that it serves to ground comprehensively justice in freedom. Indeed, beginning with the uncontroversial assumption that one of the major tasks of a theory of justice is to explain what rights people have, if overall freedom can serve as an *across-the-board criterion* of the justification of rights, then this grounds justice strongly in freedom conceived as an independent ideal. We have seen, however, that this idea does not seem to gain much traction. The Overall Freedom Test for the justification of rights does not seem to be very promising. For one thing, the test is highly dependent on actual measurements which are currently unavailable and perhaps cannot even be carried out. Moreover, it stands to reason that certain important rights such as freedom of speech would score very poorly on that test. There is, of course, the possibility that other rights such as the right to assemble peaceably score much higher on that test. Perhaps, then, the Overall Freedom Test produces counterintuitive results only in a limited number of cases.

Secondly, there are ways in which the verdict returned in the last section could be averted by changing the way the Overall Freedom Test works. Yet, they would require some reformulations of either Carter's definition of overall freedom and/or of how the non-specific value of freedom works. For example, if the extent of our freedom is not purely a physical matter, then freedoms such as the freedom of speaking our minds could lead to higher degrees of overall freedom. Matthew Kramer in *The Quality of Freedom* (2003) adopts such an approach. In Chapter 5 of that work, Kramer argues that "the extent of anyone's overall freedom is a matter that cannot be fully ascertained in the absence of evaluative assumptions" (Kramer 2003, 358). Kramer's proposal is to evaluate freedoms "by attaching heavy evaluative multipliers to the numerical expressions of any freedoms that are of especially

great significance for a typical person who possesses them” (Kramer 2003, 387). Following this approach, the particular instances of speaking our minds freely could compensate for their lesser physical contributions to overall freedom with the great significance they have for a typical person. Thus, the specific value of freedom would play a role in ascertaining degrees of overall freedom.¹⁷⁴ Another example is to reformulate the account of the non-specific value. Perhaps the non-specific value does not map exclusively on the physical space of action available to a person, and maybe other factors explain, in part, why freedom is valuable non-specifically.

Thirdly, one under-explored option is to think about the role of dispositions in this context. Dispositions as we have discussed before have an influence on the amount of freedom in society. If people either do not want to interfere with one another or they are willing to share physical components of action, then this can increase the amount of overall freedom in society, and it can render the enjoyment thereof more secure. Thus, perhaps having the right to freedom of speech serves to create a liberal culture that makes it more likely that dispositions friendly to overall freedom are developed. However, it seems that here one could develop another *ignoratio elenchi* argument similar to the one in Kramer.

Conclusion

In this chapter, we have considered Carter’s argument that we should move toward a freedom-based theory of justice. This can be done in two ways. The first is that our interest in overall freedom can serve as a reason for justifying a singular right to overall freedom. The second is that our interest in overall freedom can serve as a normative reason for

¹⁷⁴ I do not think that this modification is a desirable one. The reason for this is that it requires us to constantly adjust the evaluative multipliers so as to generate the desired measurement outcomes. Unfortunately, space precludes me from further elaborating on the problem.

espousing one set of rights rather than another. This second way of moving toward a freedom-based theory of justice suggests using overall freedom as an *across-the-board criterion* for the selection of rights. The central question was, what are the upshots of moving toward a freedom-based theory of justice?

The first way can be found in Carter's proposal for a singular right to freedom understood as a claim-right of every person to two thresholds of overall freedom. The first threshold, as we have seen, is conceived of as an unspecified amount of equal basic capital which people are to receive at the age of maturity (or on the threshold to it). The second threshold is understood as a claim to a basic income. My argument in this chapter was that, despite some limitations, it is plausible, given that financial means serve as an important proxy for overall freedom, to think of a right to freedom along such lines. In that sense, overall freedom can have a fundamental role in justifying a singular right to freedom. Hence, we could regard overall freedom as completing Task III. Moreover, it seems that the mechanism that Carter proposes for the distribution of financial means is compatible with Rawls's framework of rules. However, Carter justifies egalitarian redistribution by appealing directly to freedom as an independent ideal. This can be regarded as providing an additional argumentative strategy for liberal egalitarians. Nonetheless, this will probably not make a difference to those who reject liberal egalitarianism as such.

As regards the second way of moving toward a freedom-based theory of justice, which would ascribe to overall freedom the status of an *across-the-board criterion* for the justification of rights, we have seen that it raises more questions than it answers. In order to make sense of the idea, I have constructed what I called the Overall Freedom Test. While without actual measurement it is hard to ascertain conclusively how well a given right or set of rights would do on the test, it is possible to draw some conceptual conclusions in this context. One of these conclusions is that a right to freedom of speech would score very poorly on such a test. This is because as Matthew Kramer has argued and as Carter has

acknowledged, freedom of speech does not seem to contribute all that much to overall freedom. Moreover, I have argued that it is logically possible that selecting a set of rights based on an interest in overall freedom, would make it possible for us to trade off, say, civil rights for economic rights provided that this would entail a more favorable distribution of overall freedom.

Conclusion

I said at the outset of this dissertation that Ian Carter's work poses a challenge to the way Rawls conceived of the relationship between freedom and justice. Recall that, for Rawls, creating a just society requires freedom. This is why, as we have seen, freedom ought to be given lexical priority within Rawls's project, and we shall say that freedom is its central value (Rawls 1991, xii). This, of course, does not mean that it is the only value, yet given the way the principles of justice are defined, it is clear that it takes center stage. Hence, if there is a problem with the way Rawls conceived of freedom, this puts into jeopardy his entire project. Ian Carter's work, then, poses a challenge to Rawls because he argues that we should conceive of freedom fundamentally different to the way Rawls thought about the matter. While Carter is generally on board with thinking about justice in terms of the distribution of benefits and burdens, he argues that justice-based conceptions of freedom get the relationship between freedom and justice the wrong way round (Carter 1999, 69). Given that Rawls implies a justice-based conception of freedom, Carter's work amounts to an important challenge to Rawls. More specifically, Carter wants us to move to a freedom-based theory of justice by grounding the liberal theory of justice in an empirical conception of freedom and by acknowledging as of fundamental justificatory importance the non-specific value of freedom, which is the value attached to freedom as such (Carter 2021, 137). Broken down to its core, this is Carter's challenge to Rawls, for Rawls neither uses an empirical conception of freedom, nor believes freedom as such to be of particular importance.

Before proceeding to general reflections on the challenge which Carter's work poses to Rawls, let me briefly summarize what this dissertation established. In Chapter I, I explicated the way in which Rawls defined the relationship between freedom and justice. Rawls's conception of freedom grounds freedom in justice. In that sense, it is a justice-based conception of freedom. More specifically, Rawls's conception of freedom is focused on the

so-called basic liberties (Rawls 1999, 177-178; 2001, 42). I argued that they ought to be understood as what Steiner calls “vested liberties” (Steiner 1994, 89) and that, according to the Rawlsian story, they are regarded as essential for the development and exercise of the two moral powers (Rawls 1982; 1993, 293; 2001, 45). Moreover, in response to Hart’s critical essay (1973), Rawls came to reject explicitly the importance of freedom as such for the project of developing a liberal theory of justice, and, in doing so, he saw himself following the traditional way of thinking about freedom (Rawls 1982, 1993, chapter 8). Further, in this chapter, I demonstrated that the way Carter conceives of the relationship between freedom and justice can be regarded as a challenge to Rawls. Indeed, contrary to Rawls, Carter argues that we should refrain from relying on justice-based conceptions of freedom, and we should acknowledge the fundamental justificatory potential associated with the value of freedom as such. All of this, I argued, raises the question whether Carter’s challenge can be deemed successful. This is an important question, and one that has not been answered yet.

In Chapter II, I examined Carter’s contention that justice-based conceptions get the relationship between freedom and justice the wrong way round (Carter 1999, 69). In that chapter, I explicated how justice-based conceptions of freedom work. In so doing I built on Kramer’s distinction between deontic and modal categories for the ascription of freedom (Kramer 2003, 61; 2011) and Ralf Bader’s defense of moralized conceptions of freedom (Bader 2018A, 2018B). I argued that justice-based conceptions rely in an important way on deontic (or “normative”) categories which they define based on a specific definition of justice. This does not mean, however, that justice-based conceptions merely employ deontic categories. Justice-based conceptions do rely on a factual description of how people interact, however this description does not amount to a description of freedom. Whether or not a particular interference renders someone unfree, is a matter that necessitates making recourse to what normative (or “deontic”) freedoms people have. Empirical conceptions, on the other

hand, do not employ normative categories at all. Afterward, I argued that Carter's criticism of justice-based conceptions of freedom was strongly influenced by Gerald Cohen (Carter 1992, 41; 1999, 69-74; 2005, 153-156; 2011, 491; 2021, 137). Analyzing Cohen's criticism (Cohen 1988, 1995, 2011), I showed that only his critique relating to the notion that freedom falls out of the picture in justice-based conceptions of freedom can be regarded as promising.

Afterward, I showed how Carter has built on Cohen's work. Carter has put forward a detailed account of the way freedom should be understood independently of justice. Central to Carter's argument is the idea of freedom's independent value, i.e. the non-specific value of freedom. His worry is that justice-based conceptions of freedom sacrifice freedom as an independent ideal. In that sense, Carter believes that justice-based conceptions of freedom get the relationship between freedom the wrong way round. More specifically, Carter argues that employing justice-based conceptions of freedom renders it impossible to assess how well a given set of rights does in terms of freedom understood as an independent ideal. However, *pace* Carter, I made the point that there is in principle nothing wrong with defining freedom in terms of justice. Justice-based and empirical conceptions can be regarded as fulfilling different functions. Moreover, I argued that we can pose the question as to how well a given set of rights does in terms of freedom, where freedom is understood as an independent ideal, by relying on a pluralist theoretical framework that incorporates both a justice-based and an empirical conception of freedom. This is the case as long as we are mindful of the fact that in such a framework, justice-based and empirical conceptions would belong to two different stages of normative theorizing and fulfill different functions.

In Chapter III, I provided an explication of Carter's conception of freedom as *overall freedom*. Carter's conception of freedom is a strictly empirical conception which aims at capturing what it means to have more or less freedom as such. Carter defines overall freedom as the availability of sets of compossible freedoms. Moreover, I showed that Carter believes that overall freedom is in principle measurable through the use of units (Carter 1999).

Turning to the value of overall freedom, I argued that it is plausible to regard overall freedom as a valuable good. I then analyzed Carter's argument for the value of overall freedom, pointing out that it is mainly based on the idea of freedom's non-specific instrumental and non-specific constitutive values. I argued that there is a problem associated with the non-specific instrumental value which, however, the non-specific constitutive value can help us overcome.

Afterward, I developed a functionalist approach to the analysis of conceptions of freedom. I argued, building on Dowding and Van Hees (2007) that in order to analyze the persuasiveness of a conception of freedom we should understand a conception of freedom as facing three interconnected tasks. I called them *The Linguistic Task* (Task I), *The Value Task* (Task II), and *The Determination Task* (Task III). I demonstrated the way in which Carter's conception of freedom successfully completes the first and the second task which require that a conception of freedom find some basis in ordinary language and that it clearly specify why that kind of freedom is valuable. In terms of Task III, which regards the ability of a conception of freedom to help us paint a plausible picture about justice, I proposed that we should think about it in terms of Carter's suggestion that we should be able to justify a set of rights in part because of how well it fares in terms of overall freedom. Bestowing such a fundamental justificatory role upon freedom as an independent ideal, to Carter's mind, we are moving towards a freedom-based theory of justice. I, thus, reiterated one of the conclusions of Chapter II, namely that we should scrutinize Carter's proposal of evaluating a set of rights based on overall freedom.

In Chapter IV, I provided an analysis of the potential of overall freedom for the justification of rights, which I regarded as an inquiry into whether Carter's conception of freedom can successfully complete *The Determination Task* (Task III). I made the point that in this context Carter's proposal that we should move toward a freedom-based theory of justice is crucial (Carter 1999, 68-74). I argued that we can move toward a freedom-based

theory of justice in two ways. The first is that we can include a singular right to overall freedom. The second is that we can use overall freedom as a kind of *across-the-board criterion* for the justification of rights. The first way is exemplified in Carter's *La libertà eguale* (2005) where he cashes in a singular right to overall freedom in terms of a mechanism for the distribution of financial means specified in terms of everyone's entitlement to a basic capital and a basic income. I argued that the first way is in principle a plausible way of moving toward a freedom-based theory of justice. Contrasting Carter's approach with Rawls's framework for the distribution of financial means, I found that there is no general incompatibility between Carter and Rawls. The main upshot of the analysis was that Carter's approach can be regarded as providing an argumentative strategy of appealing to freedom in justifying certain egalitarian mechanisms. In that sense, we can regard overall freedom as completing *The Determination Task*. Yet, this argumentative strategy will probably not convince anyone who is opposed to egalitarian mechanisms in the first place.

Thereafter, I turned to the second way in which we can move toward a freedom-based theory of justice. This way bestows upon overall freedom a more fundamental role in the justification of rights. This argument is underexplored in Carter's work, which necessitated my elaborating on the idea. Inspired by Steiner's notion of rights as normative claims to freedom developed in *An Essay on Rights* (1994), I argued what is required in this context is to see rights as claims to certain degrees of overall freedom. Based on this notion, I developed what I termed the Overall Freedom Test. Employing this test I found that a right such as freedom of speech would likely score very poorly on it. The reason for this is, as Matthew Kramer showed in *The Quality of Freedom* (2003, chapter 5) that freedom of speech by itself plausibly only contributes very little to our overall freedom. Thus, it is plausible that some rights crucial for the liberal-democratic project cannot be justified appealing to our interest in overall freedom. I then offered some reflections on the second

way of moving toward a freedom-based theory of justice sketching out what I thought could be possible ways of avoiding the advanced conclusions.

Following all that, I shall offer my reflections on the challenge that Carter's work poses to Rawls. In so doing, I will also reiterate the contribution of this dissertation to the discussion surrounding the notions of freedom and justice.

Firstly, one of the central upshots of my work is that Carter, building mostly on the work of Hillel Steiner, clearly has constructed a reasonable conception of freedom. It is rooted in an important way in linguistic intuitions about freedom; it explains why freedom is valuable; and it can help us determine what justice requires. In that sense, it is a persuasive conception of freedom that can be used to do some important work within the endeavor of constructing a liberal theory of justice. While I do not believe that it can serve as an *across-the-board criterion* for the justification of rights, overall freedom can serve to justify that we pay close attention to the way financial means are distributed in society, as they likely have an effect on what people are physically in a position to do in our market-based societies. Based on this, we can justify certain economic entitlements through an appeal to freedom understood as an independent ideal. While this will not convince anyone who does not hold egalitarian sentiments, employing an empirical conception of freedom enables us to justify egalitarian policies through an appeal to freedom. To this extent, then, overall freedom completes what I called *The Determination Task*.

Secondly, another central upshot of my dissertation is that this does not mean that Rawls's conception of freedom is thereby invalidated. Justice-based conceptions of freedom are rooted in the distinction between liberty and license, which has some grounding in ordinary language and is analytically fruitful. Importantly, the central function of justice-based conceptions of freedom is to specify what conduct is required by justice, and it is perfectly sound to employ freedom-language to stipulate how people ought to interact with one another. In fact, we can be pluralist about the use of conceptions of freedom. While

employing conceptions of freedom is not an end in itself, there is in principle nothing wrong with using more than one. However, this has to be done in an analytically fruitful way. In this context, I proposed to regard justice-based conceptions and empirical ones to belong to different stages in normative theorizing. Justice-based conceptions of freedom can help render intelligible what a set of rights requires in terms of just conduct, while Carter's empirical conception of freedom can help us ask what that set of right means in terms of valuable goods that we should care about having. Overall freedom is assumed to be such a valuable good.

In consequence, *thirdly*, we can acknowledge the usefulness of both conceptions of freedom without having to reject one in favor of the other. This is the case as long as the two or more conceptions of freedom we are employing are actually distinct conceptions of freedom. Indeed, if one proposes to, say, use two conceptions of freedom where the one reduces to the other or where the second points to the same phenomena as the first but in a less analytically clear manner, it is appropriate to make a choice. In the first case we shall say we should choose to employ just one conception for the sake of parsimony. In the second case, one ought to choose the one which is analytically sounder. This, however, is not applicable in our case here, for the freedom-ascriptions provided by the two conceptions of freedom do not reduce to one another, and both conceptions, as shown throughout this dissertation, can play an important role in spelling out what justice requires.

Fourthly, it is important to keep in mind that conceptions of freedom do not have intrinsic worth. Instead, there are tools which can serve as sources for theoretical illumination given specific contexts of their use. Thus, I regard as implausible the idea that one conception of freedom has to be part of a liberal theory of justice implying that the theory would otherwise be defective. Instead, conceptions of freedom are tools which pick out some things which are normatively relevant while they leave out other normatively important things. In that sense, a conception of freedom does not tell us the whole story about freedom,

let alone the whole story about justice. Thus, it may even be a mistake to rely only on one conception of freedom, for this lends itself to letting that one conception do all the work there is to do for the purpose of defining what justice requires.

Finally, then, *fifthly*, Carter's challenge can be regarded as successful in the sense that I demonstrated that overall freedom can do some important normative justificatory work within a liberal theory of justice. Overall freedom, while it cannot serve as an *across-the-board criterion* for the selection of rights, can indeed establish a *singular right* to overall freedom. Carter's challenge fails, however, where he aims to make the exclusionary claim to the effect that we should refrain from defining freedom also in terms of justice. There is nothing wrong with employing justice-based conceptions of freedom.

All in all, this dissertation makes several important contributions. It makes a contribution to the ongoing debate surrounding justice-based and empirical conceptions of freedom by illuminating how these conceptions work and how they can be put to good use in normative theorizing. Moreover, this dissertation advances a functionalist approach to conceptual analysis. In so doing, it proposes a shift from conceptual analysis for its own sake to an approach that highlights what role conceptions of freedom can play in determining what social justice requires. Further, this dissertation also contributes to Rawls-scholarship by giving the full picture of Rawls's justice-based definition of freedom. This was accomplished by using the Hohfeldian framework to draw implications about freedom beyond the basic liberties. Finally, this dissertation makes a contribution to the debate regarding the general functioning of liberal theories of justice by analyzing the implications of moving toward a freedom-based theory of justice.

There are numerous avenues of further research that spring from this project. For one thing, the functionalist approach to conceptual analysis put forth in Chapter III can be further developed. In this context, a worthwhile question for further analysis is to ask in what way this approach can be employed to analyze other concepts such as, for example, equality.

Moreover, the idea of a pluralist approach to normative theorizing sketched out at the end of Chapter II can be pursued further asking whether a positive conception of freedom can be integrated into it. Finally, as discussed in Chapter III and at the end of Chapter IV, there are open questions as to how the non-specific works. More specifically, how exactly does the non-specific value of freedom relate to the extent of people's freedom? This is an important question that should interest anyone who attributes significance to the notion of freedom as such.

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