

JUSTICE AND THE FAMILY

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FAMILY AND MARRIAGE: INSTITUTIONS AND THE NEED FOR SOCIAL GOODS

Institutions, if unjust, ought to be reformed or even abolished. This radical Rawlsian thought leads to the question of whether the family ought to be abolished, given its negative impact on the very possibility of delivering equality of life chances. In this article, we address questions regarding the justice of the family, and of marriage, and reflect on rights, equality, and the provision of social goods by institutions. There is a temptation to justify our social institutions in terms which highlight their universal accessibility and benefits. But we may best understand the claim of some of our most important institutions where we recognize that they are forms of social good which may legitimately benefit some without having to benefit all. Their abolition is unjustified where there is sufficient value in them given our collective needs that it is unreasonable for some to refuse the means to maintain and promote these goods.

Institutions, if unjust, ought to be reformed or even abolished. This radical Rawlsian thought leads to the question whether the family ought to be abolished, given its negative impact on the very possibility of delivering equality of life chances. In this article, we address questions regarding the justice of the family, and of marriage, and reflect on rights, equality, and the provision of social goods by institutions.

The first section is devoted to sketching reasons for the abolition of the family and comparing them with arguments for ending the state institution of marriage. We point out that both the family and marriage are social goods.

The rest of the paper articulates an account of social goods in general and draws out the consequences for the examples of family and marriage. In particular, we argue that some of our main institutions may be justified by their social utility, even if we lack a broad consensus about their central significance and some question their worth at all, and even if they benefit only some, and not all.

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I

‘Is the family to be abolished then?’ (Rawls 1999, §77, p. 448). This arresting question follows from Rawls’s commitment to the idea that injustice *per se* requires the reform or even the eradication of institutions, though they might be otherwise quite effective. To put it in his own words: ‘[L]aws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust’ (Rawls 1999, p. 3). The radical Rawlsian take on our duties to abolish unjust institutions is particularly pertinent when applied to the family. And the family is the only institution whose abolition is seriously, albeit briefly, envisaged in *A Theory of Justice*. The final verdict is that there is no ‘urgency to take this course’. For Rawls, there is clearly a fundamental conflict in the basic structure between the family in any of its forms and justice. However, that conflict can be mitigated, if not eliminated, through proper application of the difference principle. Hence Rawls’s ultimate comment that there is no urgency to abolish it. And this avoids the awkward question of what alternatives we might have to the family: we are at birth helpless infants, and unless one envisages a generalized orphanage run by the state, the family in some form, from the traditional model where two adults are the biological parents of the child to more diverse groupings, is of necessity one of the main institutions of any society.¹ Near universal as this institution appears to be, there are however many reasons to suspect that the family is unjust, not solely in some of its contingent forms, but as such. There are, that is, concerns regarding the very possibility of justice *within* the family, but also of justice *of* the family as an institution, because of its overwhelming negative impact on the possibility of implementing principles of justice.

There are, first, concerns regarding the stubborn fact that the price of bearing, nurturing and caring for children within families falls overwhelmingly on women, with the resulting structural injustice.²

¹ For Rawls, the family in some form is understood as a small intimate group where elders are responsible for raising and caring for children, and have moral and social authority over them. For Rawls on justice *in* and *of* the family, see Munoz-Dardé (1998). For a contrast in terms of justice between the family in some form and a generalized, well-run orphanage, see Munoz-Dardé (1999).

² For a striking sociological account of that conflict between ideology and the reality of unequal labour even within progressive and egalitarian households, see Kaufmann (1998).

Gender inequality does not solely affect justice within the family: since the family is the place of nurturing, of moral development, and of the first development of a sense of justice, injustice within it has repercussions throughout.³

The family is also the place for initial cultural engagement and training in attitudes such as effort. A second fundamental concern, therefore, is with inequalities of life chances that are so profound that they cannot be compensated for, as Rawls eloquently explains:

[T]he principle of fair opportunity can be only imperfectly carried out, at least as long as some form of the family exists. The extent to which natural capacities develop and reach fruition is affected by all kinds of social conditions and class attitudes. Even the willingness to make an effort, to try, and so to be deserving in the ordinary sense is itself dependent upon happy family and social circumstances. It is impossible in practice to secure equal chances of achievement and culture for those similarly endowed ... (Rawls 1999, §12, p. 64)

There are obviously additional concerns in societies where there is great inequality in family income and wealth. But even when these disparities are considerably reduced, individuals' prospects of success and well-being are greatly affected by the family in which they are born: the family is 'a barrier to equal chances between individuals' (Rawls 1999, §46, p. 248).⁴

Even if, *per impossibile*, the first type of concerns about gender inequality were addressed, therefore, another fundamental aim—namely, delivering fair equality of life chances between individuals—would still be threatened by the mere existence of the family. One way to frame this second concern is as a tension between partiality and equality.⁵ Taking the family to be an inequality-generating lottery at birth, the questions become, to quote Brighouse and Swift (2009, p. 47), 'to what extent states must permit parents to favor their children, even where that conflicts with other distributive ideals, and to what extent parents are justified in pursuing familial relationship

³ For this type of concern, see Okin (1989). Compare Cohen (1997, §v). Already in *The Subjection of Women* J. S. Mill deplored that the family can be a school of despotism.

⁴ See also Rawls (1999, §77). For an illuminating exploration of the complex mixture of moral ideas involved in the idea of equality of opportunity, see Scanlon (2018, chs. 4 and 5).

⁵ For a particularly enlightening and comprehensive perspective on this tension, see Brighouse and Swift (2009).

goods for themselves and their children, rather than helping others to achieve those, or other, goods'. For Brighthouse and Swift, the answer to the question of the abolition of the family is already assumed to be negative, and the role of philosophers is to find a solution to the unjust inequalities that result from it. Addressing these inequalities takes the form of lessening the effects of parents' partiality, or restricting what counts as permissible partiality.

Notice that in order to ask the question of the abolition of the family and reflect on limits on inequality-inducing partiality in the family, one does not have to assume the priority of impartiality and equality over partiality. Rawls's question is not, How much should parental partiality be allowed to deviate from impartiality? but rather, If the only way of delivering just arrangements were the abolition of the family, would we have to take this course? So approached, the question does not start from the assumption that the moral is impartial, and that departures from impartiality in terms of partiality towards our children must be justified. Rather, the role of parental partiality in moral development can be plausibly understood to be in no need of justification.⁶ Assuming that we do have reasons to be partial to our children, the question of the abolition of the family is focused on the unavoidable, profound, and so unjust, inequalities in life chances which result. And so the problem stated properly becomes: Are there reasons of justice which conflict significantly with reasons generated by parental relations? And if so, does this recommend the abolition of the family?

Rawls's own answer to this question, and his solution to the tension between the family and equality of life chances, is, as noted above, through a substantial redistribution of primary goods through the difference principle, a principle which requires that inequalities benefit the least well off. His thought is that if the difference principle is implemented, then it becomes possible to reconcile ourselves with the unequal influence of family backgrounds on people's life chances. And this verdict on how the tension is relieved seems particularly plausible where, as a result of the operation of the first principle and the difference principle, we have a society in which a plurality of valuable endeavours are available, and people have sufficient resources to engage with their choice among them;

⁶ For an illuminating discussion of parental partiality, see Raz (2022). See also Kolodny (2010).

and moreover, where we find ourselves in a society without great disparities of income or wealth across different sectors of activity.

Very few authors envisage the abolition of the family: the institution, inequality-generating as it plainly is, seems near-universal and without an obvious alternative. The family, for all its limitations, is a focus and source of value for people; it is a good.⁷ Nevertheless, one of us sought to address Rawls's question, by taking seriously the possibility of the abolition of the family in an article in which they too came, perhaps unsurprisingly, to a negative answer to the desirability of its abolition (Munoz-Dardé 1999, §III). The article concluded that the family ought not to be abolished because this move, if aimed at making the least well off in terms of family circumstances better off, would be self-defeating. The thought was that the only alternative to the family in some form, namely a generalized orphanage, might lessen the chances of the least well off. It would also sacrifice the conditions necessary for the development of individuality required for us to make a proper use of our individual liberties. However, the same article suggested significant modifications in our understanding of what counts as families. In particular, it advocated a more individualistic treatment of the family: not as a corporate person, but as a non-mandatory association. It also contended that marriage by the state *ought* to be abolished. To put it briefly, the view argued for was that marriage either had the effect of aggregating family members in matters of rights and access to resources, with greater resulting vulnerability of the worst off, or it was a mere ritual, with segregating effects:

Where it conditions access to [resources], state marriage creates inequalities which are not beneficial to the worst off. As for the ritual, there does not seem any reason for public funding to be spent on it, nor for the state to have a say on who takes part in it. ... [S]tate institutions should have no more intervention in it than it has at present in, say, choosing the dress of the bride and paying for it. (Munoz-Dardé 1999, p. 54)

This is not an unusual move. Most theorists have been happy to assume that in a just society there would be reasons to have an

⁷For the good of close child-parent relations for both parents and children, see Brighthouse and Swift (2014). For a rather different take on the source of value in family life, see Owens (2022, ch. 6).

institution for child-rearing, the family in some form, to enable individuals to develop in their early infancy. Such a commitment is consistent with embracing radical transformations of what we call families, an area to which the political debate is displaced. (Of course, for all the resistance to changes in what can be properly called a family, one of the reasons of the permanence of this institution resides in the fact that it changes constantly, adapting to new external realities and new demands.) Where the radical theoretical perspective on the abolition of unjust institutions has shifted, before and after Rawls, is onto the abolition of marriage by the state. Marriage, unlike the family, is not an unavoidable institution. It is bound up with gender inequality and is exclusionary: through marriage by the state links of affection are formalized in a contract; and the availability of such contracts is restricted only to some liaisons. Were we simply to consider the question whether we should introduce some such institution *ab initio* in a state of nature, then there might be no clear answer whether justice would permit marriage. The inescapable needs we all have for intimate life can be located in family, our reaction against tradition and institutional resistance to change can be tied to marriage. Marriage offers a clear target for critique in a way that family avoids.

However, in the circumstances in which we actually raise the question about the legitimacy of marriage, marriage as an institution has existed in most societies for a long time, and our conception of what a family is, is also bound up with our understanding of marriage. The legal definition of family simply makes use of the legal status of marriage. So it is a too simple contrast to suppose family preserves the best of our patterns of living together, and marriage reflects the unwanted past conventions. Marriage has changed radically too, with some of its most interesting legal transformations being recent. In fact, despite vigorous theoretical arguments in favour of its abolition, marriage by the state remains a strikingly popular institution, and political movements have essentially taken the form of demanding wider, less discriminatory access to it, not its abolition.

This historical and sociological success demands further reflection. Marriage not only fosters partiality within the family, but also and more importantly, it is in the nature of this institution that it is a good which is not universally available. There is a temptation to justify our social institutions in terms which highlight their universal accessibility and benefits: marriage would fail that form of

justification. In what follows, we look at the type of justifications there might be for such an institution in its different forms. Our suggestion will be that we should understand the claim of some of our main institutions where we recognize that they are forms of social goods which may benefit some without benefitting all. Their abolition is unjustified, or so we claim, where their social value, or utility, is of sufficient importance that it would be unreasonable for those not gaining, or able to gain, from participation in the operative social value to refuse the means to maintain and promote these social goods.

II

What are social goods? In every society, there are cultural and social goods which allow its members to engage in valuable endeavours. Examples vary: from wine- or cheese-making to the practice of team and individual sports; the production of musical instruments; the promulgation of coffee shops; the formation of associations for rambling or for cycling. Museums, ice rinks, and universities too are among the social goods. It is not possible to give an exhaustive list of these goods: their genesis is historically contingent, and new ones appear constantly as a result of social and cultural change.⁸

These goods are sustained and provided through social cooperation, just as the meeting of individual needs is. Public action is needed to support social goods: the survival of many cherished aspects of cultural life would be undermined otherwise. Unlike health or housing needs, though, none of the social goods is strictly speaking indispensable for a fulfilling life. If lives could be saved just by my giving up access to some social good, say saving the life of a young person by sacrificing access to the British Museum for the rest of my life, I would not resist making such a sacrifice. The puzzling aspect, however, is that if a policy-maker proposed to redirect all the money channelled in our society towards social goods into the saving of lives, there would be an outcry.

If such claims of urgent need have a complete priority for justice, then we should sacrifice those aspects of the state (and indeed of

⁸ For a definition of social goods, see [Munoz-Dardé \(2013\)](#) and §11 below. (Note that social goods are not to be confused with what economists call *public goods*.)

charitable giving) concerned with the provision of social goods. And yet if we resist this consequence, still we are not inclined to acknowledge that we hold these social goods as more important than the needs of human beings. What then justifies our resistance?

This puzzle about the nature of social goods and how they fit into our conception of social policy is the first concern. Two of the commonest conceptions of how we should understand the evaluative basis of social policy, in terms of aggregated welfare and in terms of reasonable rejection, do not easily accommodate the centrality of social goods in our conception of a well-functioning society.

This requires a shift of perspective in an adequate account of what it is for society to be well-ordered. We need a specific focus on needs of individuals, rather than just their preferences, when we test the justness of some distribution and calculate both the demands that each can make on society and the demands that can be made on each of them by society. In turn, we can get the evaluative status of social goods into focus only when we address not only the needs of individuals within such a society but also the needs of the society as a whole. That is, in formulating policy one must pay attention not only to the needs of the members of society severally but also their needs considered jointly. With this resource to hand, we can understand the claim that such social goods have on us, without falsifying the status of such values.⁹

Social goods present at least two kinds of challenge to social theories. On the one hand, resources devoted to distinctive goods, involving time and expense from several or many people, lead to the exclusion of the pursuit of other goods. One of the ways in which city-states flourished in late medieval times and the Renaissance was by becoming centres for one or other form of excellence. A town which celebrates its violin makers cannot easily also be responsible for the finest bread. In focusing resources on temperamental painters and sculptors, a city may neglect the possibility of resourcing drama and music. Given such trade-offs, one may worry that allowing such concentration of resources on a distinctive good at the expense of others treats that good as more important than other things of value, and so transgresses the kind of neutrality required of a well-ordered state.

⁹ Here our discussion is much in debt to David Wiggins's discussion of the status of needs. See, in particular, [Wiggins \(2002, 2017\)](#).

Even more starkly, though, one might worry whether it is even permissible to expend any resources on such goods when the urgent needs to sustain life are also present in society. Is a football match, a choral concert, three watercolours, or an abstract sculpture more important than transplanting a healthy kidney to someone whose kidneys have failed, or providing food to sustain life for a few weeks or months? Few people would feel happy insisting that this is so.

The challenge may seem to be at its keenest if we think of justifying social policies in terms of what Thomas Nagel (1979) called ‘pairwise comparisons’ and consider each member of society relative to each other in turn, considering how they may fare under one policy of distribution rather than any other. Suppose, for instance, that we came to shift all the resources currently directed towards the humanities in higher education and the sustenance of the arts and museums instead towards medical research; say, for research into five rare diseases afflicting people in adolescence. Perhaps with such focused research, a suitable cure would be found for one or two of these diseases. There is an adolescent somewhere in our society who would have enjoyed many more years of life, with that cure found, than they will actually enjoy because we have our courses, our exhibitions, and our theatre shows. Does anyone want to claim that it is more important for their life to contain these evident goods than that the adolescent should live a few more years?

Few, we assume, would think the correct answer here is yes. And yet we are likewise not inclined to suppose that our social policies should instead lead to the abolition of these pleasures in order single-mindedly to pursue medical research. Is the problem simply generated by conceiving of policy choice in overly constraining contractualist terms? Derek Parfit coined the term ‘individualist restriction’ to characterize the thought that each policy should be evaluated just in terms of how it bears on the well-being of each individual in turn; and he insisted that this distorts our evaluation of what to do. Familiar utilitarian reasoning allows us to aggregate the benefits and harms across different individuals to assess the costs and benefits of allowing one course of action rather than another. So, with the individualist restriction removed, one might seek to explain the claims of museums over the health of teenagers on the basis of the numbers involved: it is not my preference for the British Museum which explains why the teenager is left to his or her fate; it is simply

the fact that the British Museum has so many visitors that the weight of their pleasure outweighs the teenager's interest in an extended life.

As forceful as the weight of numbers might seem, such aggregative strategies may prove too much. The teenager and the museum are liable to appear as merely a variation on T. M. Scanlon's example of Jones and the Transmitter Room (Scanlon 2000, pp. 235 ff.). In that case, Jones the engineer faces nothing life-threatening, but still extreme discomfort for a couple of hours unless the power is interrupted for the transmission of a World Cup match. Scanlon takes it that his readers will agree that the pleasure of the millions watching is not the kind of consideration which when aggregated together should outweigh the concern for helping poor Jones in his unfortunate situation. Just as pleasure at football doesn't seem to be the right kind of concern to offset against serious pain and discomfort, so too the wonders of the British Museum don't seem the right kind of thing to balance against the extension of the life of the unfortunate teenager.

It remains the case, then, that a small but significant proportion of resources in society come to be devoted to learning, the arts, entertainment, and other such social goods. This is so whether the source of funds is predominantly the state or some private institution or wealthy individuals. Even when our predominant concern is with the urgent needs of individuals, these further activities make a claim on us. We care deeply about these things, but are unlikely to rank them as more important than a human life. The puzzle of social goods is to articulate why we should feel entitled to preserve this status quo.

Elsewhere one of us has suggested that the solution to this puzzle involves recognizing two structural facts about the ways in which we might justify social policies by looking to the complaints that individuals can make (Munoz-Dardé 2013). In keeping with an individualist restriction, the focus is on when any individual can reasonably complain that implementing some given policy demands too much of them. On the conception of pairwise comparison given above, the sole concern is to measure the relative well-being of any two individuals under any relevant policy regime. So all that is relevant is the relative level of well-being of the individuals, without any concern for whether some base line of sufficiency in life has or hasn't been met.

The first structural move, then, is to suggest we should shift focus to the idea of what is sufficient to live well. We need to consider

resources not simply in terms of how they indifferently produce good, or satisfy preferences, but rather in terms of whether they are essential to living sufficiently well. The important question is whether they are *needs*. When someone reasonably rejects some policy, it is because the consequences of that policy will deprive them, given the circumstances, of what they need to live their life well. No just social order can make such a demand on anyone. Someone who resists such a demand is not thereby claiming that what they care about is more important than the other goods which will result, nor that they are more important than the people who will benefit. Rather, the point is simply that the purpose we all agree upon for the political order is that it should at least allow for each to live a sufficiently good life. It is reasonable for me to resist a claim on the basis that it deprives me of what I need; and in doing this, I do not thereby claim my resource or my life to be more important than that of others. I merely claim that I am required to sacrifice more than can reasonably be demanded.

Once we frame the matter in terms of needs, then we can also see an additional complication in the status of social goods. We might agree that what is strictly necessary for life to go well is that one comes to engage with activities of sufficient value in the course of life, and that one has sufficiently broad choice among the worthwhile activities to select where to place one's energies. Higher education in the humanities, dance, museums, soccer are only conditionally necessary for us. It is strictly true, then, that I don't need soccer or good coffee to live life well: I don't need these given that there are other equally worthwhile goods or activities which I could substitute. But the seeming demand that we sacrifice all educational and cultural pursuit to preserving life would remove not just the goods I happen to engage with and enjoy, but *all* such goods. And it is this unconditional removal of what matters that we balk at.

Of course, the story that we have so far told provides us with at best a symmetry between the needs of the rare unfortunate adolescent and the needs of the lucky majority. It offers us no way of deciding between these two: in either option, what someone needs to live a fulfilling life will go. That this tie is in fact broken given our attitudes towards funding and resource reflects the fact that we do not actually have the cure for the rare fatal disease: the adolescent is asking us to sacrifice goods that others partake of for the chance of coming up with a cure for them. Whether that difference

is enough to explain our verdict we leave to one side at the moment, and instead turn to the second structural point.

So far, nothing in our account of why social goods are of value exploits their distinctive social nature. We have simply indicated that the goods on offer are among the needs that individuals have, and hence can be balanced against the needs of others without any claim for greater importance. But this misses an important element of the social goods: these are things that matter in our lives in a *social* way. One way to bring this thought out is to highlight how these goods are important, going beyond the benefits they bring to any given individual. We can imagine a future state of our society in which all the young decide, each for him or herself, that it would be best to pursue a life in which they solely service the urgent needs of others. Each of them signs up to work as a medical orderly, or as a volunteer in overseas aid. Without the participation of the next generation, universities, theatres and musical activity all decline and disappear. Given the choices of each individual, their own particular needs do not suffer in these circumstances: each still manages to choose a meaningful life. Even so we might feel, something very valuable and important in our society would be lost if all of the young happened to choose to live in this manner.

Now, we suggest, an element of what is lost should be recognized within our picture of social policy. And it can be, if we add to our account a recognition of the needs we have in common, social needs we have all together jointly. While an individual may have made such life choices that they have no need of the social goods in our society, this does not void the needs that we have together as a society for these goods. And the recognition of our shared needs can lead to demands on the allocation of resources which go beyond individual choices.

Many discussions of social policy and values balk at any talk of our shared needs which might contrast with the needs or welfare of individuals. Such talk of the social might seem to implicate a commitment to entities beyond the individual agents that constitute society, and such an appeal to the interests of such entities might threaten an illiberal, or partial, conception of social order. However, properly understood, we can recognize an appeal to a distinctively shared, or social, aspect to social goods without positing any additional entities or invoking any level of higher ideal which imposes constraints on individual liberty.

In the sentence, ‘The troops surrounded the castle’, we have a claim which cannot be made true by any one individual: it requires a plurality of troops, given the general size and shape of human beings and inhabited fortifications, to encircle the castle. So, the truth conditions of this claim should not be taken to be equivalent to any conjunction or disjunction of claims about individuals and how they are disposed. At the same time, one should be sceptical of the need to introduce a new entity over and above the individual troops on the battlefield to witness the truth of this claim. Rather, the claim, when true, is true in virtue of what holds of the plurality of the troops in question taken collectively rather than severally. Russell and Whitehead wrote *Principia Mathematica* together. It is not true that Russell wrote *Principia Mathematica*, where that would imply he was the unique author; nor is it true that Whitehead wrote it. Rather, they wrote it together. Such cooperative activity did not require any additional entity beyond the two philosopher-mathematicians. It just required a kind of joint rather than individual action.

The idea that number in verbs and noun phrases reflects logical and semantic significance has in recent years gained much traction in the philosophy of logic and mathematics.¹⁰ We suggest that it should be put to work equally in the theory of the social world. We cannot make proper sense of the social world around us unless we can make sense of the fact that there are various social activities which involve multiple agents acting collectively. These activities cannot be reduced to a sequence of actions carried out just by distinct individual agents. And we do not do justice to their nature if we substitute for the individual agents in the action some special social entity: a set, or collection, of agents, or a corporation. Rather, to recognize social action and collective action, we need to acknowledge the contrast between what an individual can do on their own, or singly, and what several agents can do together, or plurally.

In the current context, the key idea here is that we, as a society, can have needs together plurally. That we need universities or museums should not be read as a claim that each of us individually has this need. Rather, the need arises for us taken collectively, where we happen, as things stand, to live in a social context where various goods arise only given the coordinated activity of individuals in that

¹⁰ See Boolos (1984), Higginbotham (1998), Florio and Linnebo (2021), Hossack (2000), MacBride (2005), Oliver and Smiley (2005), Smith (2009), and Florio and Linnebo (2021).

society. Part of what is distinctive of the social goods is not only that they arise only in the context of living together, but that our need for them is also irreducibly social: we together need them, as members of a society which has given rise to them. Their value cannot be captured simply in terms of what individuals on their own might want or need.

There is a contrast here between the question of needs and the question of well-being. Where we talk of well-being, it is plausible that the well-being of a collection of individual agents cannot amount to anything different from the well-being of each of those individuals. There is the logical possibility of distinguishing the well-being of a plurality considered non-distributively and that well-being considered distributively as a matter of how each individual does well or not. But when we consider the substantive nature of well-being, there is nothing to be made of this contrast. If the plurality is nothing over and above the individuals in question, then well-being for the plurality can be nothing over and above the well-being of each individual. We can draw no contrast between the individual and collective level unless we move beyond individual concerns and aggregate the benefits to the many as against the costs to the few. In contrast, we suggest, when we look at needs, we can recognize the possibility that several agents can collectively need a certain good without it thereby following that any one of those individuals needs it singly. Of course, individuals have entirely singular needs. But when they live together, the complexity of life can make it the case that needs also arise plurally. To recognize this fact, we move to a perspective where we consider things socially, but we do so without either positing any special social entity or aggregating the concerns of individuals into a supra-individual lump.

So social goods arise in a distinctively social context, and the normative import of such goods can be fully understood only in terms of a social, shared context.

Note that in our discussion so far of social goods the emphasis has been on the social dimension of enjoyment of these goods: we do not appreciate the place of these goods in our lives unless we recognize the collective needs that we have for them. This is quite consistent with supposing that the good in each of these examples is entirely realized and appreciated at an individual level. But we should also recognize that in our original list, many of the goods have a social dimension in how the good is created, that it involves the activity of many, and

how the good is appreciated, that we learn social norms which direct us to what is good about such things. To this we can add the thought that there may be social institutions or conventions whose existence is to be explained by how they bring about public utility.

Should the emphasis be on the universal accessibility of social goods, and on the state's neutrality among them? There is a long liberal tradition which emphasizes how the good life allows for choice and experiment among multiple ways of living. Understood one way, neutrality should require the just state to be indifferent among the various social goods that could be made available through collective activity. With sufficient bounteous resource, this would be to support them all. Absent that golden age, indifference would seem to require refraining equally from each such good. And this would have the stultifying effect that most of the contingent goods that we profit from in life should come about independent of direct or indirect state support. This is not an appealing direction in which to take social policy. The diversity of social goods, and the variable demands they impose within a society, results in variable realization in different societies. But these are none the less goods, and they answer to our collective needs to live in society which foster at least some such goods, even if occasionally at the expense of other possible goods. In this context, we should be suspicious of the demand of universal benefit or access for a good. Even if one of us does not personally benefit from the good of rugby union, one can still recognize that there is a worth in that activity, and that the sport in question meets a general need within society for such sporting activities. So the question for each of us is not the simple one, How do I benefit from this? but rather, Is it reasonable for me to withhold the costs imposed on me given the social good that we find here? A liberal society will be concerned with providing a plurality of goods and recognizing a diversity of ways of living, and with this a concern of increasing access to the social goods made available. But all of this is consistent with denying that the well-ordered society requires strict equality in access or enjoyment to each of the goods.

III

How does this affect the debate around marriage as a state institution? We propose that the question of justification here should focus on marriage as a certain kind of social good, an institution which

fulfils certain needs within society, and should therefore be looked at in terms of the public utility it provides. To think of marriage in this way shifts the debate. Given the swift and, across the Western world, near-universal adoption of revised laws concerning marriage, there has been much political, legal and philosophical debate about the values of marriage and the questions of equity and respect which the revisions, and the resistance to them, are apt to raise. The large scale and swift social change surrounding family and marriage has been accompanied by vigorous debate in theoretical terms. Much of this theoretical debate shares an assumption with the political campaigns it seeks to comment on: that we should find in marriage a distinctive social value, and relative to that either lament the exclusion of some from this social good or justify the restriction of the availability of this good, given a proper understanding of what matters. When it abandons this focus, the philosophical debate shifts to another question, namely, Should our concern with equality require the extension of marriage in other ways, or even its abolition? With this second question is associated a concern with the right form, if any, marriage should take.

In general, there is the assumption that in the debate around marriage there are only two perspectives: a conservative one, which seeks to protect marriage as the expression of certain values surrounding supposedly traditional families; and a radical and critical perspective, which seeks to drastically reform or abolish marriage because it questions either those family values or the role of the state in promulgating those values.

In contrast, we suggest that the proper perspective from which to evaluate the acceptability of state-regulated marriage focuses on the kind of public utility that marriage as an institution provides.¹¹ Matthew Kramer notes in his discussion of the difficulty of finding a neutral stance on intimate relationships, ‘Even in a society without any state-recognized marriage, governmental institutions will have to regulate people’s multifarious intimate relationships’ (Kramer 2017). We propose that this offers a key insight into the context in which we should think of marriage: the institution of marriage exists within the flux of intimate relations within society and the consequences that these bring, which lead to various forms of regulation.

¹¹ For an argument to a similar conclusion but focused on the compatibility between the institution of marriage and Rawls’s political liberalism, see [Wedgwood \(2016\)](#).

States regulate individuals' behaviour in many ways. Marriage is but one method by which the state can seek to exclude some ways of living and promote others. But in contrast to various proscriptions and inducements, it is notable that marriage is a voluntary legal institution that many see benefit in. And so, rather than disputing what its further or deeper significance might be, one might rather see marriage, particularly in its legally recognized and regulated form, as a kind of social instrument. Those who partake in it find at least an interest in it through the benefits this instrument provides. The resilience of marriage as a social institution may best be understood, not in terms of some past value that the status of marriage echoes over the centuries, but in terms of the current utility it offers to those who can participate in the institution.

What is its utility? One element here concerns the attitudes that the majority of adult human beings in developed societies have towards the organization of their intimate lives, the ways in which families arise in the first place. Although this has been, and remains, the cornerstone of state regulation, it is something which could conceivably alter over time and social change. But the recognition that attitudes might change needs to be balanced in our theorizing against the equal recognition of predominant patterns of concern as they actually, and currently, exist. So, let us focus on the lives that people currently live.

The resources needed to maintain a home which include areas for cleaning one's body, excretion, the preparation of food, and the availability of a safe space in which to sleep are more efficiently provided if they can be shared among a small number of people with whom one stands in some form of emotional intimacy. Many people share a romantic ideal that it is best to stand within such confines with those with whom one is in some way romantically involved, and with whom one shares erotic pleasures; moreover, that the sharing of this kind of intimacy should be joined together with shared responsibility for parenting, or other care duties that make up what is recognizable as family units.

For such living arrangements to be effective, parties to such an institution have an interest in creating inertia in the arrangement, to aid one's reliance on the arrangement and to make it stable. So the existence of a certain legally recognized pattern of benefits and obligations within such an institutional status may help to make it the case that, once one has committed to be part of such an arrangement,

one can oneself rely on the other party or parties just as they do on you, at least within certain limits. Marriage as a publicly recognized status provides for some stability, and some individual control over family arrangements. In addition, given the general public recognition of the kind of commitment involved in this institution, the fact that one is so related to someone else through the institution may also be used in other social practices as a proxy. For example, that one is linked in marriage may be used as grounds for the passing on of various benefits. Hence, in many societies, rules for inherited wealth work differently in relation to those bound through marriage from rules for wealth transfers based on other kinds of relationship; and in many countries, bonds of marriage give a basis for different treatment, for example, of visitation rights in prisons or hospitals and rights to settle, or to gain citizenship, than do other kinds of relation of support or interest.

Members of society will typically have such interests in family life and the possibility of using a legal framework to impose stability and exercise some control over their lives, whatever more general conception they have of the values of family and the role of marriage in expressing that. If we think of the fundamental legitimacy of marriage, or perhaps more narrowly, legally recognized and regulated marriage, in terms of this social utility, then we can see that there is much more consensus about the worth of marriage than the debates that have raged in the last few decades would predict. If marriage is an institution which meets collective needs that we have, then we can see the point in such an institution persisting whether we have an individual interest in making use of it or not.

In emphasizing utility, we do not deny that many see in marriage a distinctive significance: for some a religious or sacred significance, for others a matter of secular good. And much of the debate develops out of the significance people find in it: for some, this justifies allowing only certain kinds of marriage arrangements, because only such marriages would express or respect the significance of the marriage union. Likewise, the significance may be appealed to in order to restrict the conditions under which marriage can be dissolved.

Rather, recognizing the utility of marriage explains why people with very different perspectives can all have an interest in making use of the institution. Recognizing that it is a social good which has a particular history within each society tempers the demand that there should be a purely a priori rationale for the particular bundle

of legal rights that come with the institution. Of central concern is not the conception of family that some wish to promote within society, but the distinctive role that marriage as an institution can play in cementing families. As it stands, this comes with certain central rights and obligations, to which may be added other ancillary benefits through its proxy role. Marriage is not simply the bundle of rights which exist in UK or US legislation at the moment, as those who argue for unbundling and minimal marriage are concerned to stress. But nor does it have to be conceived as bearing some distinctive value associated with any particular conception of family life, to have a nature which goes beyond such an arbitrary bundle.

For some social conservatives, tradition or historical precedent reveal social values which ground the exclusion of certain kinds of partner-relations from the distinctive marriage contract. At the same time, some feminist and egalitarian theorists have challenged the legitimacy of state marriage. In addition to long-standing concerns with its role in gender inequality, they have questioned whether extending the recognition of state sanction to same-sex couples goes far enough. Why shouldn't the bundle of rights and privileges in a given society be extended wholesale or piecemeal to other intimate arrangements? Should we not recognize the claims of the polyamorous? Or give equal weight to the preferences of those who wish to live together with something akin to family rights, but not in traditional marriage, as siblings, friends, people united by fondness for each other, or strangers who share an enthusiasm for peanut butter or model railways?¹²

From the perspective offered here, both of these reactions are to be treated with scepticism. It is not true in our actual societies that the only interest that the vast majority have in an institution like marriage lies in the values promoted by social conservatives. Anyone who wishes to recognize the diversity in our societies will resist this picture of how society should be framed. But it would be a mistake to suppose that nothing more could be made of the worth of marriage. Likewise, those who wish to shrink marriage to minimal marriage, or extend its nature to just arbitrary affiliations, miss the role that it plays in relation to the family lives that people wish to enter into.

¹² For some of these suggestions see [Brake \(2012\)](#) and [Calhoun \(2005\)](#). For a recent argument in favour of the abolition of marriage, see [Chambers \(2017\)](#).

This is not to say that this bundle of rights has to be preserved in any of its current contingent forms. Many of the rights associated to the status of being married (for example, to health insurance or to pension rights for dependents) ought to be detached and individualized rather than attached to the status of being married. Others of these rights should indeed be extended to other caring relationships. In addition, there is no denying that many of the benefits currently granted by states to those who are married aim to control and structure intimate relations in an illiberal manner which often calls for radical reform. An area which is still in much need of change is how the legal definition of marriage leads to a restrictive, and often discriminatory, conception of what constitutes a family, with associated rights.¹³

However, whether there is formal marriage or not, states are liable to engage in the regulation of intimate life. Marriage, or some legal equivalent, offers individuals something beyond simply such regulation. It offers a chance of public recognition of their status; added inertia in their family arrangements; some protection over property and goods held in common within the family. It also, just as importantly, has an expressive function for partners who rely on its shared public meaning (Wedgwood 2012, 2016; Macedo 2015). Marriage is a public expression of the complex bonds of commitment that arise within family life. Public expression, like making a promise, can have the function of creating inertia. But the expression itself has value for many of us, an opportunity to display one's commitments to the world at large. Although the popularity of making use of the institution can wax and wane, there remains a persisting interest in access to the institution. The sociologist and campaigner, Eric Fassin insists that LGBTQ members of society had a strict interest in civil unions or the PACS as the basis of proper recognition of their rights to family life in common with heterosexual couples.¹⁴

¹³ The state has a tendency to regulate behaviour in pursuit of some and against other conceptions of the good. This holds in relation to marriage no less than other parts of life. Resisting such behaviour as illegitimate doesn't ground by itself the rationale of abolishing marriage, however. For, it is only if marriage essentially has the role of promoting some conceptions of family over others that one would think it essentially coercive in that way.

¹⁴ Fassin's comment was a criticism of De Singly and Munoz-Dardé's support for the abolition of marriage by the state in De Singly and Munoz-Dardé (1998).

He suggests that the significance of marriage as a passing cultural artefact is that people can read into it whatever significance they are inclined to, and that this is what the discourse of arguing about marriage is about. Similarly, François de Singly's sociology of the family suggests that the family strikes us as an immutable institution precisely because its form and the values associated with it constantly change (De Singly 1995).¹⁵

If we leave aside the debate about the values or significance that marriage may be taken to embody, we can focus our concerns on the utility and interest that people find in the institution. This will be quite consistent with recognizing that the institution may change in form quite radically, as people's lives and needs change, but that something like marriage may yet persist. The core function that we find in this institution is to provide a legal framework within which individuals can manage the arrangement of intimate life. Marriage offers inertia and stability in relation to commitments which many people cannot avoid making, given the interests they have in romantic encounter, intimate living with others, and often also shared parenting. Patterns of dependence have changed markedly over the last couple of centuries and, given changes in life expectancy and varying levels of morbidity, will undoubtedly change again over coming decades. Revisions in relation to dissolution reflect such shifts in interest; and we can see the sharp alteration of attitudes towards same-sex marriage as reflecting the same perspective. The vast majority of people see marriage as a useful institution which others broadly should be able to make use of. And this leads us back to whether marriage distinctively raises questions of equity and justice.

IV

This emphasis on social utility throws a different light on egalitarian critiques of the status quo. For some critics suppose that institutions such as marriage can only be justified in a liberal, democratic state if this good is equally accessible to all. But it is unclear, from the perspective we explored earlier in this paper, why such a strong

¹⁵ Moreover, the evolution is not as linear as it is sometimes presented. See, for instance, the existence of transgender parenthood and 'female husbands' from 1746 to shortly before the First World War as documented in Manion (2020).

condition should be imposed on justification of any social institution. The story we have told about other social goods emphasizes the role that the idea of plural needs plays. Things which are valuable for our society get to claim their status through being needed by us plurally, where that is not equivalent to the claim that it is needed by each and every one of us. Parallel to that thought, we can recognize the social utility of a public institution such as marriage without having to suppose that it is useful in just the same way to each and every one of us.

We can compare the attractions of marriage to the delights of museums, ball games and university education. In general, we do not insist that the sole mark of the justification of diverting resources to such goods is that everyone in society have an equal interest or preference for such goods. Rather, we recognize that their value is a shared need for all of us; the cost may fall on all, but identifiable benefits are enjoyed by only some. We suggest that one should take the same perspective of the social institution of marriage: given the kinds of intimate arrangement the vast majority of citizens want, marriage arrangements meet the needs that they have. Those who do not embrace, or indeed reject, these arrangements and prefer less stable intimate relations cannot reasonably reject the institution of marriage, even where this institution fits none of their needs. The alternative would be to abolish marriage or transform it to have virtually no restrictions on the number of persons involved in a marriage, or on the type of relationship that these persons have. But the more flexible the legal framework becomes, the less such a framework is able to provide the two key elements of inertia and external proxy. The more flexible the conception of living arrangements, the less capable we are of producing a social institution which provides the utility that marriage does for many today.

This throws a different light on the contest for access to legal marriage for same-sex relationships. It is tempting to suppose that the grounds for contestation turns on equal access to the goods that marriage can provide, and this is why there should have been a pressing need for the reforms that have swept Western countries this century. But, given the perspective offered here, we should not assume that societies can only support social goods for which there is equal access and equal uptake. That is not to deny that equality and equal concern are at the heart of the matter. Once we give up the misleading simplification that all social goods must be for all people,

we can get a clearer focus where the failing falls. We have suggested that there is no reason to suppose that there is any single shared value within a society which marriage promotes. Our common interest in marriage is the utility it provides those setting up households. What grounds can there be, then, to refuse the utility of marriage to families based in same-sex relationships, other than a refusal to recognize the worth in such families? Attitudes towards who can make use of marriage, and for which arrangements, simply cannot be separated out from more general attitudes towards the worth of families and the regulation of intimate relationships. Fassin is right to insist on the demand that there is a general interest in making use of these institutions, and a society cannot avoid expressing a lack of respect for LGBTQ families if it ignores or denies such interest.

Once we focus on the utility of marriage as an institution, we can see that some of the critiques of the institution lack appropriate normative grounding, and also that they fail to echo social movements' demands for its extension in a recognizable form. A key virtue, from the point of view of those who elect to use the state-sanctioned vehicle, is that various benefits and obligations together create an inertia for their intimate life arrangements. Given how the obligations and benefits come to be parcelled out, it will only be efficient within a society that such a structure arises for the distinctive kind of social arrangement that most individuals are interested in being part of. The utility of such an institution, which can provide both inertia and validation, requires a special status, if not uniqueness. Multiplying options and complicating compliance checks for status undermines the utility of such an institution, just as excessive fragmentation of overlapping franchises can hobble one's transport infrastructure. This does not require that there be one unique institution, however. The UK and France give us interesting and contrasting examples, with civil partnership and the PACS, of attempts to provide varieties of legal recognition. In each case, different strategies were adopted to contrast the alternatives with marriage, and the consequential use of the option varied accordingly.¹⁶

Were the vast majority of adults uninterested in close living together with partners with whom they have had some interest in

¹⁶ It is notable that some social conservatives in France were in favour of a version of the civil partnership, or PACS, similar to Brake's 'minimal marriage', with no restrictions on the number or the type of relations involved in it. Their hope was that this would preserve 'real marriage' and put a halt to increasing demands for access to legal marriage.

sexual or romantic liaison or forming a family, then the utility of marriage would fall away. Marriage as an institution comes with its central functions of inertia and public mark of association, and consequent on that has associated a set of (somewhat arbitrary or idiosyncratic) benefits, which are common in developed societies at the moment. Acknowledging this arbitrariness is not sufficient ground to entirely unbundle the rights, as abolitionists or proponents of minimal marriage recommend. For, were we to move to the complete unbundling of the sets of rights and duties associated, then the core utility of the institution as a social instrument might be undermined.

Whatever the frisson generated by Rawls's question, no one takes seriously the abolition of families. No one can really conceive of life going well for the vast majority of people without arrangements of the kind of intimate living together that is family life. In common political discussion, it is a familiar trope to contrast family and marriage, and to associate the negative features of living together with the latter, while recognizing the unavailability of embracing the former. Once we recognize that just as families are unavoidable, so too is state regulation of living together, then the persisting utility of marriage, or equivalent institution, comes into focus. We have a need of institutions which allow us to create inertia and regulate living together. This is not a universal need. But seeing marriage as a social good allows us to see it as something which does not have to benefit everyone equally; it simply needs to be a sufficient good that it would be unreasonable for anyone to deny the benefit of it to others. How people live together shifts, and will no doubt shift more radically still. Throughout the changes, something we recognize as family persists. As long as we live in state-ordered societies, if families exist, so too will our interest in marriage in some form.

Marriage is a social good, something that the vigorous social movements for its extension echo. Some of its most interesting transformations from the perspective of justice, and of the least well off, are still to come. But no more than for the family does justice require for marriage to be abolished.^{17, 18}

¹⁷ Critics of marriage are right to highlight gender inequalities and injustice that arise within marriage. Equally striking, however, is vulnerability outside of marriage.

¹⁸ Versions of this material have been presented to audiences in Paris and Stanford. We are grateful for comments and criticisms to Rae Briggs, Hannah Carnegie-Arbuthnott, Jorah Dannenberg, Eric Fassin, Jessica Fischer, Guy Longworth, Rowan Mellor, David Owens, and Matthew Soteriou.

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