

RAWLS, JUSTICE IN THE FAMILY AND JUSTICE OF THE FAMILY

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A form of contractualism more individualistic than Rawls' would do better at addressing concerns about justice and the family raised by feminist theorists, and would also compel us to be more egalitarian. That is, dissatisfactions expressed with Rawls' theory and his neglect of issues related to gender and the family can only be addressed if 'parties in the original position' are strictly defined as individuals. Provided no ties of sentiments between family members are assumed in the original position, individuals in it are able to address questions of justice within families, and also inequalities between members of different families. In the following essay I shall defend this view. This will entail examining the equivocal place the family occupies in Rawls' theory.¹

Why take Rawls to task on the family, though? At first sight, the themes of justice *in* and *of* the family – the former concerning the division of labour and, more generally, the application of principles of rights and justice within this institution, the latter concerning the less familiar question of whether the family should exist from the point of view of justice, and which form, or forms, if any, it would take – may seem only two among a number of themes that Rawls refuses to explore in depth. Other important questions which his account of justice leaves almost entirely aside are justice between states, protection of the environment, civic education, retributive justice, the needs of the handicapped, democracy in the workplace and women's equality. A number of Rawls' critics have found his conception of justice defective precisely because he fails to address some or all of these questions. He does provide a form of answer to these critics by saying that his conception of justice is 'worked up by focusing on a few long-standing classical problems' and should 'provide guidelines for addressing further questions' (*PL* p. xxix).

¹ I shall treat his *A Theory of Justice* (Harvard UP, 1971), hereafter *TJ*, and *Political Liberalism* (Columbia UP, 1993), hereafter *PL*, as a single theory.

Accordingly, he invites us to apply the conception and principles formulated in *A Theory of Justice* and *Political Liberalism* to other fundamental questions.

The trouble with this procedure in the issue at stake here is that Rawls himself is constantly tempted to go far beyond it, and to treat the family as a special institution. Thus the justice *of* and *in* the family do call for more enquiry, within Rawls' own terms, at the early foundational stage of deliberation on the principles of justice in the original position. I shall begin with an exposition of this aspect.

I. RAWLS AND THE FAMILY: WHAT THE PROBLEM IS

1. *Perplexing statements*

Mentions of the family in Rawls' two books tend to produce the impression that either too much or too little is being said on the topic. Here are two examples. When discussing the idea of public reason, Rawls (*PL* p. 243) gives the following illustration:

Suppose ... that we consider [abortion] in terms of these three important values: the due respect for human life, the ordered reproduction of political society over time, including the family in some form, and finally the equality of women as equal citizens.... Now I believe any reasonable balance of these three values will give a woman a duly qualified right to decide whether or not to end her pregnancy during the first trimester.

I do not mean to discuss Rawls' statement in itself. But one can remark that it is unclear why the 'ordered reproduction of political society over time' is a value to be considered here, and further that it is unclear why this value should include 'the family in some form'.

In the same chapter about public reason, Rawls examines 'non-public reasons'. He defines these as 'the many reasons of civil society' which belong to the 'background culture'; he stresses that individual, associational and political ways of reasoning share common elements, and explains:

The public *vs.* non-public distinction is not the distinction between public and private. This latter I ignore: there is no such thing as private reason. There is social reason – the many reasons of associations in society which make up the background culture; there is also, let us say, domestic reason – the reason of families as small groups in society – and this contrasts both with public and social reason. As citizens, we participate in all these kinds of reason and have the rights of equal citizens when we do so (*PL* p. 220).

Again, if families are small groups in society, it is unclear why their reason should contrast with social reason, and if so how; the impression is that the

division between ‘individual’, ‘associational’ and ‘political’ reason should be enough.

I could have quoted other passages, particularly from *TJ*. However, I have chosen these recent statements because, while producing a sense of dissatisfaction, they also evidence some receptivity to feminist debates. Incidentally, the public/private distinction is put aside, and it is stressed that when we participate in ‘all these kinds of reason’, including ‘domestic reason’, we have the rights of equal citizens.

The dissatisfaction one experiences is therefore not because Rawls adopts a discriminatory or biased attitude towards women’s rights, but because the family is both treated as a distinct and fundamental institution, and never discussed in any detail. This has the unhappy consequence that it obscures the way in which feminist criticisms of the theory could be met. It also obscures the fact that, in order to meet some of these, certain modifications have taken place between *TJ* and *PL*.

The only mention made in the latter book of the problem of family and gender equality is to acknowledge (p. xxix) that this theme is omitted:

the justice of and in the family [are omitted], though I do assume that in some form the family is just.

Once again the sentence is unsatisfactory, because, after saying that he omits to talk both about the justice of the family and in the family, Rawls insists on presupposing that the family in some form is just. In order to pronounce on this issue, at the very least some enquiry seems needed; but it never takes place.

In order to get a clearer picture, and understand this insistence on saying both too much and too little on the family, let us analyse the place of the family in Rawls’ essential concepts.

2. *The family and the basic structure*

The family appears very early on in *TJ*, as an example of institutions belonging to the basic structure. It is therefore one of the major social institutions, the primary subject of the reflection on social justice, which determine the attribution of fundamental rights and duties, and shape the social division of burdens and advantages.

By major institutions I understand the political constitution and the principal economic and social arrangements. Thus the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, *and the monogamous family* are examples of major social institutions (*TJ* p. 7; my italics).

A similar, if shorter, perhaps less controversial, list of fundamental institutions and social arrangements belonging to the basic structure is given in *PL*. It contains the political constitution, the legally recognized forms of property, the organization of the economy, and again, but in a more neutral phrase, ‘the nature of the family’ (p. 258). The change avoids misunderstandings: it is now clear that no particular form of the family (and no particular division of labour therein) should be assumed.

The object of political theory as Rawls conceives it is to find a conception of social justice, the principles of which apply to this set of major institutions, and to explain how they fit together. The concept of basic structure is vague,² but sufficiently clear for our purposes here, in that it contains the main institutions of society, which in turn define the distribution of rights, duties and the economic opportunities and social conditions in the various sectors of society.

The conception of social justice does not define the virtues of the institutions in the basic structure, it defines its *distributive* aspects. This draws attention to one of the main problems raised by the family, namely, its substantially negative impact on the principle of equality of opportunities, a question which receives surprisingly little detailed attention.

3. *Family and fair opportunity*

The first substantial reflection on the family and its relationship to social justice appears in effect in the context of the discussion of equality of opportunities, as an institution which *limits significantly* the reach of that principle:

the principle of fair opportunity can be only imperfectly carried out, at least as long as the institution of the family exists (*TJ* p. 74).

Even in a well ordered society that satisfies the two principles of justice, the family may be a barrier to equal chances between individuals. Equality of opportunity may obtain between sectors, but not between individuals (*TJ* p. 301). Rawls thus introduces towards the end of the book (p. 511) what could seem a very radical perspective on the family:

Is the family to be abolished, then?

However, in answer to his own radical question about the abolition of the family, he immediately asserts that within the theory of justice as a whole there is no urgency to take this course, and that if ‘the principles of fraternity

² For an exploration of the concept of the basic structure see G.A. Cohen, ‘Where the Action Is: on the Site of Distributive Justice’, *Philosophy and Public Affairs*, 26 (1997), pp. 4–24.

and redress are allowed their appropriate weight', the inequalities arising between individuals from different family and social circumstances 'can more readily be accepted'.

The question raised here, and immediately put aside, is the problem of the justice *of* the family, not of justice *in* the family. The reason to abolish the family is not its negative effects on, say, gender equality (which may be solved by modifying our understanding of the division of labour within this institution), but the fact that *as long as the family exists* individuals will have unequal life chances.

Given this fundamental and unfair effect, it seems that the discussion of the abolition of the family (and therefore of the desirability or otherwise of this institution) can only be avoided in one of two cases:

- (a) if the family is treated as a 'brute fact' (or rather, as an unavoidable fact), or
- (b) if the need for this institution is justified for reasons more powerful than its unjust effects.

Political philosophers spontaneously tend to adopt the first of these options: the family is a 'natural' fact. (This must be the reason why egalitarian readers of Rawls have not taken issue with him on this point.) However, the unavoidable fact is that children are born helpless, not that they should be educated and cared for by parents, within families. As for Rawls, he may be inclined to adopt the first position, but he introduces both a more radical perspective (he envisages the abolition of the family), and some suggestions that the correct position is the second one (the family is 'just'). The question arises then: what are these powerful reasons which make the family 'in some form' just, in spite of its severely limiting effects on the principle of fair opportunity?

On a superficial enquiry, the justification of the family seems to reside in the importance of this institution for moral development (*TJ* pp. 490–6). Other arrangements, equally efficient, may nevertheless have been found to achieve this purpose. In fact, the possibility of those alternatives to the family is clearly envisaged by Rawls (see *TJ* p. 463).

The family could also be considered just, simply as a form of association (it would then be supported by the first principle of justice). But then, if it is but one more association, it is strange that it gets singled out as a *just* institution. So what seems to be behind Rawls' undeveloped position is the idea that the family is a special form of association, and that it is because of its special nature that it is just.

In order to clarify this point, it seems necessary to go back to the original position, in which the principles governing a just society are chosen.

4. *The family and the original position*

This is the area of Rawls' treatment of the family which has prompted most feminist criticisms; these have particularly challenged his definition of the contracting parties behind the veil of ignorance as 'heads of family' or 'heads of households'. This is an aspect where a significant change has been introduced by Rawls, since in *PL* the parties are no longer described in these terms. However, he presents this change only as a minor technical reconsideration of the original position, and not as a modification required by coherence, in order not to leave the family opaque to claims of justice. It is at any rate revealing to understand why the idea of 'heads of family' was introduced in the first place. I shall therefore go back to the description of the original position in *TJ*, to analyse this question in some detail.

Rawls introduces the conception of heads of households as a device for enabling people behind the veil of ignorance to care about their successors:

we may think of the parties as heads of families and therefore as having a desire to further the welfare of their nearest descendants (*TJ* pp. 128–9).

Here it is important not to get too entangled in mere turns of phrase. True, the idea of 'heads of family' or of 'heads of household', directly borrowed from classical contract theory (in which it serves to describe the duties of the male person in charge of an extended family, including adult children and servants³), is not the most felicitous phrase. It is also not clear enough in Rawls' phrasing that parents behind the veil of ignorance can represent only the interests of the children of the following generation, and not the interests of the other parent. (Indeed, since there is only one head per family, the suggestion seems to be that they do.) But what this means is merely that Rawls should be more careful in adopting formulations from the classical social contract in a literal way. This is at any rate clearly a superficial worry, since he specifies that the only essential aspect is that each person in the original position should care about the well-being of some of those in the next generation (*TJ* pp. 128–9).

Rawls elsewhere defines the parties as 'continuing persons' or 'genetic lines'; he also uses the idea of an 'everlasting moral agent'. If we follow this last interpretation, there is little that should worry the reader concerned with justice between the sexes within the family.

On the other hand, at first the necessity of this notion *seems* clear: it is important not to have 'egotistical generational choices'; in particular, it is important that the parties care about their descendants, so that they

³ See for example Kant, *Metaphysics of Morals* (Cambridge UP, 1991), pp. 100–1, on 'Right of Head of Household'.

preserve 'just savings' (since future generations are not represented behind the veil of ignorance).

However, a host of problems arises here. The first of these is that, as people who may never exist, the status of persons from future generations as *bearers of rights* (to just savings) seems shaky. Rawls' arguments also seem to beg questions about the justice of inherited wealth. But even if one grants this, an obvious and serious problem is that this view means readopting a conception of aggregation of interests (of members of different generations). If parties are a balanced aggregate of family members of different generations, then Rawls' criticisms of utilitarianism apply.⁴ A potential conception of generational conflict of interests is suggested by the idea that the interest of representatives from periods adjacent in time 'overlap', but they do so in the head of family's head, and not as a result of the process of deliberation behind the veil of ignorance. Feminists would therefore be right in thinking that in *TJ* the family is opaque to claims of justice. The balancing of conflicting interests (generational or between the sexes) within the family would in effect never take place.

The idea of a family as a 'continuing person' or 'everlasting moral agent' does not pose fewer problems. The most fundamental of these is that if each of the parties is a continuing person over time, different individuals are, ultimately, the same person. We are therefore losing the individualistic statement of the original position, and moving surprisingly close to something like Sandel's position. (Where the 'person' includes more than one individual, there cannot be much difference between the idea of a person continuing over time, i.e., across generations, and of a person continuing over space, i.e., across a community.)

There may nevertheless be another fundamental idea here, calling simply for a different description of the parties, since Rawls tells us that to ensure justice between generations an individualized care is a necessary condition (*TJ* pp. 128–9: the concern of the parties is for a different individual in each case). For example, we could say that thinking of the next generation as the generation to which their own child could belong prevents egotistical generational choices from the parties. If this is the idea, then the parties behind the veil of ignorance should be described as 'carers'. That is, they should be neither heads of families nor genetic lines, but mutually disinterested individuals who care about their (potential) descendants.

In response to criticisms, Rawls has slightly modified the formulation of the conditions for an agreement on a just savings principle. The parties are now said to agree to a savings principle that they want *previous* generations to

⁴ The first mention of this criticism is in Jane English, 'Justice between Generations', *Philosophical Studies*, 31 (1977), pp. 105–15.

have followed (*PL* p. 274). The fact that the parties care for their descendants is nevertheless still presented as a ‘reasonable stipulation’, presumably because the individualized care just stressed is still held to be necessary. The interpretation of the parties as mutually disinterested individuals who care about their descendants would therefore seem accurate.

But thinking of the parties behind the veil of ignorance in this way cannot be right. It would in effect attribute to them the psychological inclinations and the conception of the family that *we* have. This contradicts the idea of the original position as a device of representation where the parties ignore the psychological propensities of the persons they represent. The deliberations of the parties, and the motives we attribute to them, cannot be mistaken for an account of the moral psychology either of actual persons or of citizens in a well ordered society. The inclinations for caring of the parties behind the veil of ignorance therefore cannot be ours, nor the inclinations that people would have in a just society. Placing the question of care for the next generation in an individualized manner behind the veil of ignorance has therefore the consequence either of accepting that special ties of sentiment should play a role in the original position, which is ruled out by the construction of this heuristic device, or of situating in the original position what should be the result of deliberation in it, namely, the idea that the family ‘in some form’ is just, for example, because of this capacity to care for each person as the singular individual he or she is.

5. *Provisional conclusion on the problem*

What we have seen so far is that Rawls tends to confuse the conception of the family that we hold in our society, the position of this institution behind the veil of ignorance, and the existence of the family in a just society (to which it should belong ‘in some form’).

He does this at a heavy cost, in terms both of formal coherence and of the reach of the principles of justice. In effect, he accepts that special ties of sentiment play a role behind the veil of ignorance, thereby contradicting the purpose and construction of the original position. This rules out a reflection upon the justice of the family, and leaves us with the impression that inequalities of opportunity between members of different families are accepted all too readily. He also seems to be accepting aggregation of interests of different family members, thereby losing an individualized account of justice, and begging the question of justice in the family, of the division of burdens and benefits within this institution.

I note in passing that this individualized account is, however, clearly necessary in order to arrive at statements made by Rawls concerning justice

in the family, e.g., that individual members of families need protection from other family members (*PL* p. 221). If this is the case, then the family cannot be treated as anything other than an association of individuals, which is precisely how Rawls defines it elsewhere (see *TJ* p. 467).

Two modifications are therefore called for: first, not to define the parties behind the veil of ignorance as heads of family or genetic lines, but to prefer a more individualistic account of the original position; second, not to assume that the parties care in a particular manner for their own descendants. (Here some may object that removing ties of sentiments between generations is unrealistic. It may be true that parents tend to care about their offspring. But they tend to care about other people in society too. The reasons for discarding ties of sentiments behind the veil of ignorance in the second case apply in the first case also.)

Before I explore these two moves and their consequences, I want to take a pause to look at two main lines of feminist criticism of Rawls. I shall indicate some of the responses that have been given on Rawls' behalf, and where they are inadequate I shall suggest others; but I shall not undertake to provide a detailed assessment of each argument in turn. Rather, I want to highlight how they help thinking about the issue here at stake. The common aspect which interests me in the different feminist thinkers I shall briefly look at is that they do not take the family and relations within it for granted, thus providing us with important insights.

II. FEMINIST CRITICS OF RAWLS, AND THE FAMILY

Feminist critics of Rawls have taken two fundamental directions, both addressing the problem of care for dependants (which means that they are sometimes conflated). The first of these concerns a problem not unfamiliar to virtue theories, namely the difference between two kinds of moral agent, the contractual subject of liberal theory and a more relational self, perceptive of the needs of others. The second line of objection addresses the problem of exploitation and domination. The first line therefore concentrates on care as a distinctive (and superior, or prior) way of moral reasoning, the second on care as the name for the unpaid work which is done in the domestic sphere.

The first line of criticism holds that Kantian liberals generalize an idea of the self which is gender biased, and therefore present female moral qualities and inclinations as inferior, when they acknowledge them at all. The proponents of the ethic of care put forward one of the most sophisticated versions of this argument. They claim that an ethic of emotional attachment

and responsiveness to needs provides the unacknowledged foundation for moral reasoning and action, and propose that the moral agent is not the contractual subject of liberal theory but a relational self.⁵ They question the privileging of universal moral duties over responsibilities that derive from local, personal attachments. Following Carol Gilligan, they differentiate between two types of moral development, one aimed at autonomy, the other aiming at satisfying community with others, and two types of responsibility, one which has a commitment to abstract obligations, and the other being responsive to particular relationships.

A number of arguments have been raised in opposition to the idea that there is a clear segregation between two types of moral reasoning, in order to stress the importance of universal principles, such as justice and autonomy.⁶ It has been pointed out that justifying moral action through special ties may be plausible in easy cases, but that relatedness provides little guidance in difficult moral dilemmas; that principles provide a standard from which to decide when a particular situation makes conflicting concrete demands; that the strength of the impartialist ethical perspective is that it requires us to take account of the needs and suffering of persons with whom we have no immediate connection. It is also emphasized that Kantian abstract principles are not fundamentally context-insensitive. By requiring that in matters central to justice people think from the standpoint of others, Kant and Rawls do not shift to a transcendent point of no contact with reality; rather they insist on the availability and accessibility of principles to all, in concrete situations. It can be added that by devoting exclusive attention to responsiveness to needs, particularly of helpless infants, and by dismissing the notion of independence, care theorists have not provided any procedure or moral standards for the resolution of conflicts precisely over the definition of those needs, for example when children begin to think for themselves. Carers can care in a manner that we may find oppressive or even damaging. By stressing what is wrong with paternalism (and by implication with *maternalism*), the social contract tradition provides resources precisely for addressing these issues.

⁵ This stems from Carol Gilligan's *In a Different Voice: Psychological Theory and Women's Development* (Harvard UP, 1982). A number of authors have used her empirical findings. Among these, see Annette Baier, *Moral Prejudices: Essays on Ethics* (Harvard UP, 1994); Nel Noddings, *Caring: a Feminine Approach to Ethics and Moral Education* (Univ. of California Press, 1984); and Sara Ruddick, *Maternal Thinking: Towards a Politics of Peace* (Boston: Beacon Press, 1989).

⁶ There are many critical assessments of the 'ethics of care' and its compatibility with an 'ethic of justice'. A useful collection is Virginia Held (ed.), *Justice and Care* (Boulder: Westview, 1995). See also Jean Hampton, 'Selflessness and the Loss of Self', *Social Philosophy and Policy*, 10 (1993), pp. 135–65; Thomas E. Hill Jr, 'The Importance of Autonomy', in his *Autonomy and Self-Respect* (Cambridge UP, 1991), pp. 43–51; and Will Kymlicka, 'Feminism', in his *Contemporary Political Philosophy: an Introduction* (Oxford: Blackwell, 1990), pp. 238–92.

However, the discussion of the ethics of care has enriched the debate about justice and the family significantly. One of the most fundamental questions raised by the ethics of care is how we bring into being this autonomous self described by the contract theory. How, in Rawlsian words, are all citizens to become ‘fully co-operating members of society’ and to acquire ‘a lively sense of their own worth as persons, to be able to develop and exercise their moral powers and to advance their aims and ends with self-confidence’ (*PL* p. 309)?

A related problem which the thriving recent literature on the ethics of care has emphasized is that certain Kantian universalists relegate everyday ethical practices, such as parenting, to a ‘private’ realm, which could have the effect of hiding or devaluing them. This draws attention to the double meaning of care, both as a moral sentiment and as a number of concrete activities or work related to child-rearing.

This takes us to the second general line of objection put forward by feminists against Rawls (and against contract theory at large) concerning the problem of exploitation and domination. On this view, which emphasizes the gender division of labour, the principles of justice at which classical and neo-contractarian theorists arrive do not challenge the specific site of male domination, namely the family. By neglecting the issue of child-rearing, they leave the problems of the gender division of labour unexamined, beyond the reach of just relations. While the public sphere would be governed by principles of justice, the private sphere would remain the place of paternalism and potentially of male tyranny over women’s bodies and lives.

A way of reformulating this objection is to say that contract theorists have not applied consistently enough to the family their central anti-paternalist stand against any form of natural authority; that is, that they have given up too easily on the essential idea of autonomy of female as well as male individuals, particularly in the sphere of the family.

An influential attempt to pursue precisely this line has been developed by Susan Moller Okin,⁷ who argues that Rawls ‘can readily be put to feminist uses’ and that a consistent application of Rawls’ liberal principles of justice can lead us to challenge fundamentally the gender system of our society. However, she criticizes Rawls for appealing to the Kantian heritage of thought on rationality and autonomy, which does not, according to her, allow him to acknowledge any role for empathy and benevolence, and which supposes a ‘rational choice’ bias.⁸ (One may note in passing that it seems remarkable how Kant has become the villain of a certain feminist

⁷ In her *Justice, Gender and the Family* (New York: Basic Books, 1989).

⁸ These views are developed in her ‘Reason and Feeling in Thinking about Justice’, *Ethics*, 99 (1989), pp. 229–49.

critique that itself depends upon a broadly Kantian conception of autonomy.) Okin maintains that, properly re-interpreted, the original position would be less 'individualistic, rationalistic and abstract from real human beings' than it appears. Those in the original position would in effect adopt, through empathy, each possible concrete position in society. Thus re-interpreted as a device in which empathy with and care for others play a central role, the original position would, says Okin, avoid feminist criticisms and acquire a critical force that could be put to feminist purposes. For example, considerable alterations in the family arrangements of our society might well be implied if we take seriously the fact that those in the original position are ignorant of their sex.

In the light of the renewed interest in women's mode of moral reasoning mentioned above, it is easy to see why Okin tries to show that at the centre of Rawls' theory there is a voice of care and concern for others. But, as I tried to show earlier, if benevolence and care are allowed to play a role in the original position, this creates problems for the theory. It is also futile: if parties behind the veil of ignorance ignore their sex, it is enough to obtain the result Okin desires, namely that gender equality be considered as an issue of justice.

Some readers of Okin have rebuked her neglect of the Rawlsian difference principle, suggesting that her discussion of equality between men and women suffers from the fact that she leaves unexamined many relevant disputes on equality and how best to interpret and apply it. Others have censured her deeply conventional view of the family, pointing out that she mainly argues for a redistribution of burdens *within* the traditional monogamous heterosexual family, in which children should, according to her, be equally parented by both sexes.⁹

Okin has responded to this last charge by saying that social policies aimed at reducing gender bias are very likely to reduce heterosexism.¹⁰ Still, the problem lies not so much with the conventionality of Okin's conception of the family as with the fact that her project of a just distribution of burdens within the family does not sit easily within a Rawlsian framework. If both girls and boys were taught early on how to combine work and parenting, and were brought up in 'liberalized families', with parents of both sexes combining these activities, the result would be, she contends, a just future, that is, 'one without gender'. But an agreement to this effect could not be obtained between the parties behind the veil of ignorance. In the original

⁹ See the reviews by Joshua Cohen, 'Okin on Justice, Gender, and Family', *Canadian Journal of Philosophy*, 22 (1992), pp. 263–86, and Will Kymlicka, 'Rethinking the Family', *Philosophy and Public Affairs*, 20 (1991), pp. 77–97.

¹⁰ See her 'Sexual Orientation, Gender, and Families: Dichotomizing Differences', *Hypatia*, 11 (1996), pp. 30–48.

position the parties not only ignore their talents, their social position and their sex, but they also ignore the particular comprehensive doctrine of the person each represents. This thick veil of ignorance is designed to find a conception of justice that can gain the support of citizens who affirm different comprehensive doctrines. It is difficult to see how Okin's conception of a liberalized family would fulfil this condition, and be the object of a 'reasonable overlapping consensus'. Rawls' political liberalism, and the difference between 'comprehensive liberalism' and 'political liberalism' which has become central in his latest work, makes it impossible to think of a state which would require that the values of autonomy and individuality govern all aspects of family life. (The mistake Okin seems to be making is to think that each family needs to be ordered according to the two principles of justice. In Rawlsian terms, the only thing that can be demanded is that families should be subject to the same legal constraints as other groups and associations in the overall society, and that the family should fit together with other main institutions so that the principles of justice operate.)

Okin's discussion of how to use Rawls' concepts 'as a tool for feminist criticism' may therefore seem disappointing. But she has provided what is to date one of the best attempts to meet feminist concerns regarding the traditional neglect of child-rearing and care for dependants, without giving up a robust picture of individual autonomy and individual rights. In particular, she has pressed the requirement that liberal egalitarians have to show that they take seriously all the implications of recognizing every person, male or female, as autonomous. This entails clarifying that the commitment to privacy does not mean that there is such a thing as a 'private sphere' in which tyranny can be freely exercised and work is invisible.

In order to do this, an important move would be to treat the family not as an anthropomorphous institution, with a 'head' and 'members', but as a particular form of association. This is equivalent to questioning the idea of a natural family, best formulated in Rousseau's *Social Contract*, and still to be found in many state policies. The family, Rousseau says (I 1), is 'the oldest form of society and the only one that is natural': natural, in that it is the only human institution which is not based on conventions. However, both the structure of the family and the conception of the division of roles in it *are* based on conventions, and change from tradition to tradition and from time to time. No particular form of it is therefore natural. (Perhaps surprisingly, a first move towards rethinking these presumed natural relations between men and women is already present in Kant: see *Metaphysics of Morals* pp. 96–7.)

A coherent application of the recognition of autonomy in all persons, male or female, a distinction of the principle of privacy from the idea of a

private sphere where rights do not fully apply and oppression and work are invisible (i.e., where work is not conceived as a burden), as well as a critical reappraisal of the idea of the natural conception of the family, are therefore some of the implications of feminist critics of Rawls. All these aspects apply to the justice *in* the family.

I have also suggested that the recent developments of the ‘ethics of care’ draw attention not only to the oppressive and negative aspects of the family, but also to a distinctive positive feature, namely the daily ethical practices that are inseparable from the moral development of the autonomous citizen, as described by Rawls. This is more relevant to reflecting upon the justice *of* the family.

We are now ready to return to Rawls, and to see consequences of the proposed moves, complemented by these insights of feminist theorizing.

III. RAWLS AND THE FAMILY: SUGGESTED MODIFICATIONS, AND THEIR IMPLICATIONS

My suggestion was that two moves were necessary in order to provide a more coherent treatment of justice in and of the family, namely, (a) to drop the idea that parties in the original position are heads of families, or even genetic lines, and to prefer a more individualistic account of the original position; and (b) not to assume that the parties are attached by sentiments to their own descendants.

My claim at the beginning of this paper was that this strictly individualistic conception of the parties can take us much closer to the solution of problems addressed by feminists, and that it also compels us to address the detrimental effects of the existence of families on the principle of fair equality of life chances between individuals. I shall first expand a little on the first aspect.

We have seen that Okin takes Rawls to task for not saying enough about just relations within the family. I want to suggest the opposite view (with a similar objective, I think): namely, that the only thing that feminists should ask from Rawls is that he should *refrain* from saying too much about the family, and that he should treat it exactly as any other association.

Let us assume for the sake of simplicity that we have no argument with Rawls’ principles of justice, and that we are only worried about their capacity to address injustices within the family. It would then be enough to be able to show that these principles apply within the family (that is, that in matters of justice members of families are treated in exactly the same way as members of any other small group or association).

Provided no aggregation of interests is presupposed, behind the veil of ignorance, between the parents, and between them and their children, this is exactly what obtains.

This is particularly relevant to envisaging the distribution of the burdens of care towards dependent members of families (small children, some elderly or handicapped, and so forth). Because rights apply to all family members in the very same manner as they apply to members of churches, of universities and of any other association, work within the family is submitted to no more and no fewer legal constraints than in any other free association. This does not mean that there can be no such thing as free donated labour within the family, for voluntary work exists in other associations. It means literally this: that legal constraints which apply to all associations in this respect should also apply to the family. It is perhaps not for political philosophy to consider *how* care work should be paid, nor by whom. But it is clear that in what Rawls calls 'a property-owning democracy' no distribution of burdens should leave anybody in a state of material dependence that makes them absolutely vulnerable to coercion.

Now we could very well stop here, and I think that this is just what Rawls would feel inclined to do. But, if egalitarians, we could also return to the question asked by Rawls himself about whether the family should be abolished, in view of its leading to unequal chances between individuals. For the new position defined allows us not to treat the family as an unavoidable fact, nor to assume the justice of that institution (and thus accept too easily its inegalitarian effects).

The individualistic description of the parties in the original position which constitutes the first move, together with the second move of not assuming that the parties care for their descendants, has a fundamental consequence: that these parties are able to deliberate and decide whether the family 'in some form' should belong to the basic structure (and if so, in which form, or forms), or whether 'other arrangements' are indeed preferable. This is a line of reflection which is, as we have seen, hinted at by Rawls, but never developed beyond the iteration that 'the family in some form is just'.

It is familiar for political philosophers to imagine what things would be like without a state, in order to reflect on whether we need a state, and on what form, if any, it should take. The parties in the original position could be carrying out a similar investigation with respect to the family, in order to decide whether the family is justified, if at all, and what form, or forms, if any, it should have. To phrase it in more precise Rawlsian terms, the question would be how the major social institutions within the basic structure fit together, so that prior and independent principles of justice (such as

the principle of fair equality of opportunity between individuals) are in place; and in this context the existence of the family and its permissible form, or forms, if any, can be discussed.

In carrying out this investigation, though, a first difficulty arises, that we do not have a definition of what we understand by 'family'. The 'geographical' division between a 'private/domestic' sphere and a public domain, the 'genetic line' mentioned by Rawls, the domestic economic unit, the care and love that we give and receive especially between parents and children, the extended group of loose kinship, the idea of a place for privacy, all those notions are lurking in our ill defined idea of what a family is.

We could, however, for our purposes here define the family as a form of association structured around individualized care for dependants, especially between one generation and another. No particular form of this association need be proscribed, at least in a first stage of enquiry. What is necessary is that each grouping should care for different individuals. This applies particularly to the problem of raising and caring for children, and ensuring their moral development.

Two ideal types of institutions could be defined. On the one hand, we can think of state institutions in which the parental link with children is completely absent, and which give exactly equal education to all children (a sort of generalization of Plato's conception of the education for guardians). On the other hand, by what we may call 'family' we might only mean that a parental link of some sort, whether biological or through adoption, exists. On this definition, the range of models for family structures is very wide. The definition given does not make assumptions about any natural, and therefore unchallengeable, feature of the family. Heterosexual and monogamous unions, homosexual couples or any other small intimate grouping would correspond to this definition.

The assumption Rawls seems to be making is that the retaining of some form of family, defined in this general manner, is preferable to the first ideal type. That is, that the existence of an institution in which adults have a certain autonomy in giving what they consider the best possible education to their children, with all the inequalities this implies between and within families, is preferable to a more thorough application of the idea of equality.

I think that some of the reasons that make the generalized orphanage so unappealing, even if defined as well resourced and well run, may help in considering why one would hold this.

I suggest, in this direction of thought, that the individualized ethical activities for the moral development of children that ethics of care theorists have constantly emphasized are precisely what Rawls has in mind when he asserts that 'the family in some form is just'. There is a description in *TJ*, no

doubt, of the acquisition of moral principles and of a sense of justice by children, within the family. However, beyond this description (which is still assuming the justice of the family, rather than deducing it), the idea seems to be that children need to be treated partially, as the singular persons they are, in order to flourish and acquire fully ‘a lively sense of their own worth as persons, to be able to develop and exercise their moral powers and to advance their aims and ends with self-confidence’. If this were the idea, and *if* it could further be proved that the family would score better at this than a well run and generalized orphanage, then a powerful justification of the family would be found. Amongst other things, it would link this institution, with particular care devoted to the whole *persona* of the child, to the development of self-respect (‘perhaps the most important primary good’).

So *if* the case against the generalized orphanage could be made in this way, then it is plausible that the parties behind the veil of ignorance would prefer the family to a generalized orphanage, even if well run. The idea would be that a full sense of individuality and autonomy would not be acquired without the existence of individualized care in the second ideal type of institution for child-rearing defined, i.e., the family. The family in some form would then be ‘just’ in this particular sense, as well as in the more general sense in which other associations of free individuals are just.

I here register a doubt: I am not certain that on further scrutiny the family would score better than the orphanage. That is, I am not certain that, if well run, a generalized orphanage would score worse in terms of understanding children as individuals, and treating them differently, all within the constraints of equal opportunity. And the case of the family seems to me particularly difficult to establish from the perspective of the least well off.

A detailed analysis of this problem will have to be conducted separately. In any case, if successful, the defence of this institution I have sketched here leads to two provisional conclusions.

First, since it has been established that the family is not an unavoidable institution with a fixed, natural structure, the defence of the family provided above does not commit us to any particular form for this institution. In other words, different forms of family must be considered equally just, in the two senses defined above (as non-mandatory associations, and as the locus of provision of a sense of individuality, autonomy and self-respect).

Second, if correct, this defence of the family against its abolition makes it all the more urgent to ascertain how the family could fit together with other major social institutions within the basic structure, so that prior and independent principles of justice such as the principle of fair equality of life chances between individuals would still be in place. It therefore forces us to consider it an urgent task to devote attention to the significant limitations

such an institution imposes on the principle of fair equality of life chances, and to find compensatory mechanisms to restore some of the efficacy of this principle for each individual.

One of the fundamental claims of Rawls' *A Theory of Justice* is that utilitarianism is not individualistic enough. I hope to have said enough here to show that a form of contractualism more individualistic than Rawls' is more coherent, and also more just. The consequence of a theory of justice arrived at through a moral reasoning procedure which starts from, and responds to, the separateness of persons is that it requires us to guarantee to each person, whatever their family circumstances, a fair go in life.¹¹

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