

# III\*—IS THE FAMILY TO BE ABOLISHED THEN?<sup>1</sup>

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**ABSTRACT** This article explores the justice of the family. From the perspective of justice, the family causes serious concerns, for it causes severe inequalities between individuals. Several justice theorists remark that by its mere existence the family impedes the access to equality of life chances. The paper examines whether this means that justice requires the abolition of the family. It asks whether everyone, and, in particular, the worst off, would prefer the family to a generalized well-run orphanage. This thought-experiment is used to inquire which value, if any, is such that (a) it would be menaced by the abolition of the family, and (b) in a just society, it would be prioritized over the principle of equality of life chances.

## I

**T**he family is one of the main causes of morally arbitrary inequality. Moreover, it is not an inequality which makes everyone better off. And it is not inevitable that we should have the family. Would everyone, and, in particular, the worst off, prefer the family to a generalized well-run orphanage?<sup>2</sup> In this paper, I want to examine this issue by addressing a question which I borrow from John Rawls: ‘Is the family to be abolished then?’ (1971, p. 511).

It may be useful to define the domain of inquiry more precisely. The question asked is not whether the family is to be abolished *tout court*. The narrower inquiry I conduct here concerns whether *from the point of view of justice* the family should be abolished. The question arises because the effects of the family are so profound that its mere existence may severely impede the access of individuals to equal life chances. Moreover, this institution induces

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2. I postpone until Section III below to explore what the expression ‘well-run’ entails.

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inequalities that are not beneficial to the badly off,<sup>3</sup> and that are not the effect of a choice for which they can be held responsible. It would therefore seem natural for justice theorists to inquire into the justice of the family, especially if concerned either by the position of the worst off in society, or by the distinction between brute luck and choices for which we are responsible. Theorists of distributive justice are, however, inclined to treat the family as inevitable, or at least as obviously necessary. To the extent that they discuss it at all, they tend either to promptly dismiss the issue or to diffuse it by focusing on the autonomy of families, rather than on the liberty and autonomy of individuals within them.<sup>4</sup>

The dissatisfaction with such theorists does not stem, obviously, from their refusing to recommend the abolition of the family. It is to do, rather, with the fact that by failing to inquire into the exact reasons for preserving the family in some form and by not identifying what, if anything, we ought to prioritize *over* the principle of equality of life chances, they are led to accept too readily unjust arrangements. In other words: by assuming what they should seek to prove—that families have to be treated as entities of value such that laws which harm them for the sake of equality cannot be part of a just society—their theories might have to pay the cost of leaving the less fortunate in society in a worse position than they might have been as a result of a proper inquiry into this issue.

In looking at the justice of the family from the point of view of the worst off, the perspective I will adopt throughout this paper is broadly Rawlsian. More specifically, I adopt here, but do not

3. Throughout this paper, I use expressions such as ‘badly off’, ‘worst off’ and ‘least advantaged’ in a broad sense. As will become clear, the extent to which members of families might be thought to lose out is not limited to the distribution of material burdens and benefits. It also affects the realization of their capacities, their moral development, their capacity to form and pursue their conception of the good, and hence not only their welfare, but also aspects directly related to their enjoyment of equal liberties.

4. The literature on this is immense, but two examples may serve as an illustration. Consider firstly Rawls. He notes that *even* in a well-ordered society that satisfies his two principles of justice the family may be a barrier to equal chances between individuals (1971, 301), and consequently asks whether the family is to be abolished. But he directly proceeds to consider without much argument that there is ‘no urgency’ to take this course. (For more details see my ‘Rawls, Justice in and Justice of the Family’.) As for James Fishkin, who has provided to date one of the best attempts to address this issue, he identifies a trilemma between merit, equality of life chances and the autonomy of families, which he treats as consensual units located in a private sphere of liberty. So by identifying the claim of liberty with the autonomy of families, he begs the question of the distinction between persons. (1983, esp. chap. 2.4 and 3).

argue for, Rawls's claim that utilitarianism is not individualistic enough. My aim is confined to exploring the *consequences* of this claim for reflection on the family. From this standpoint, two aspects are instantly apparent. Firstly, that justice requires us not to be concerned with family welfare or autonomy, but with each family member's demands for respect and well-being. Secondly, that the deprivations or sufferings of the worst off are not compensated for by the total of individual well-being. So whether or not a great many individuals are better off because of the existence of the family is irrelevant in settling whether the family would be one of the institutions of a just society. What matters is whether the existence of the family ensures that the least advantaged members of society are better off than they would be with its abolition.

The following two sections will be devoted to exploring some of the respective merits of the family, and of what I shall describe as a generalized and well-run orphanage. I shall then turn to some of the policy implications of this discussion. I will argue for the strict removal of aggregate conceptions of family members in matters of rights and of access to advantage. My contention is that if we really want political institutions which guarantee that every person is cared for, then these should not enforce, nor assume, communal or family attachments. A second, perhaps more surprising concluding thought is that there should be no such thing as marriage by the state.

I shall begin with a sketch of what I take the elements of the problem to be.

## II

Let me concede an initial difficulty with the question of justice of the family. The difficulty concerns the definition of the institution of the family itself: for there are many possible understandings of what constitutes a family. For the purpose of this paper, however, I shall concentrate on a fairly precise aspect, namely the family as a small intimate group where elders are responsible for raising and caring for children, and have authority over them, irrespective of the children's wishes.

The family in some form is the most accepted solution given to the fact that some must take responsibility for young dependants.

(And other forms of dependants: people who are temporarily or permanently in the same situation as infants with regard to capacity for taking decisions on matters that affect them, such as some handicapped or some elderly.) State legislation operates on the basis of the additional assumption that the biological family is the most acceptable form for this institution, and accepts other forms only when they are judged successfully to mimic the biological one.

From the perspective of justice, the family thus understood poses at least two sorts of concern. The first of these is constituted by serious and reiterated doubts about the possibility of successfully implementing justice *within* this institution. There are frequently expressed areas of scepticism that it will ever be possible to achieve a just division of labour and, more generally, a thorough application of principles of rights and justice within the family. In turn, these produce injustices in society at large, for example because sexism in the family is then responsible for the enduring sexism in society, and the reproduction of gender inequalities. (This has been the focus of attention for many feminist political theorists, whether they hold that justice in the family can and should be achieved, or not.)

But whether or not this is possible, whether the question of justice in the family can be given a satisfactory answer or not, considerations of justice arise anyhow. A second area of concern, noticed by several justice theorists, is that as long as the institution of the family exists, there will be severe constraints on meeting fair equality of opportunity, or life chances, between people raised in different families (e.g. Rawls, 1971, 74, 301 and 511). A way of presenting this view is that as long as there are families, and hence deep inequalities between people's initial circumstances as regard class, social condition, cultivated attitudes to effort, to self-sacrifice, to autonomy, and so on, the ideal of equal realization of people's natural capacities and moral powers, including their capability to form, revise and pursue their own conception of the good, shall not be delivered.<sup>5</sup>

5. In the rest of this paper this is the interpretation of inequality I will assume. It is not, strictly speaking, the view put forward by any particular author. This broad understanding of inequality of life chances corresponds to the comprehensive sense in which the least fortunate in terms of family circumstances might be said to be at a disadvantage. (See footnote 3.)

Hence from at least two different perspectives, strong suspicions are expressed that the existence of the family is only compatible with a diminished justice.

The reason justice theorists who point towards these negative effects of the existence of the family, both for gender equality and for fair equality of life chances, do not however wish to pursue this problem much further is that they treat the family as a given, in two different ways. Some simply take their lead from Rousseau and consider the family to be a brute natural fact, the only institution not based on conventions (1767, Book I, 2). From this perspective it may be true that family circumstances deeply affect our prospects in life, but since there will always be families, the only duty of political institutions is to compensate those who have been particularly unlucky, in the same way that they may concede some extra benefits to counterbalance the misfortune of somebody born with no legs. However, the family is hardly a brute fact in this sense: the brute fact is that we are born as helpless infants, and that for some time decisions which regard us are entirely or overwhelmingly taken by others (decisions that affect not only our opportunities in life, but the kind of person we become). But it is not a brute fact that children should be educated and cared for by parents, within families.

So, a second, more refined, position—famously adopted by Rawls—consists in claiming that the existence of the family is not inevitable, and that it does lead to unequal chances between individuals, but that it is nevertheless necessary for moral development, and hence for citizens to have a sense of justice. (Rawls, 1971, § 70–76. Okin adopts a similar view on moral development.)

Notice that this conception of moral development may coincide with common sense, but that it rests on fairly strong empirical assumptions. Whether the natural capacities and moral powers may be more developed within families than within a well-run orphanage, with devoted teachers (something like a good boarding school for all) is an empirical matter difficult to settle.

Psychological research on this empirical link between families and moral development may not be conclusive, but luckily it is something we may not need to pursue. For even if it is conceivable that some would flourish more fully morally within families than

within a well-run orphanage, the case is wholly implausible from the perspective of the least well off. A related problem is that justifying the necessity of the family in this way constitutes in any case an intriguing strategy. For this second approach to the family concedes that it is not inevitable that we should have the family, and that the family does constitute an obstacle for fair equality of life chances, but proposes an instrumental defence of it. The problem with this defence is that the value sacrificed and the value this sacrifice is used as a means for seem to be the same. It is mystifying that the family should be maintained for citizens to develop a sense of justice, at the cost of diminished justice. More precisely, it is odd that the explicit price to pay for securing *presumed* optimal conditions for the moral development of some should be a *verified* unequal realization of people's potential, including unequal realization of their moral powers. (This is especially so given the great improbability that the least well off raised in a well-run orphanage would develop their potential less than the least well off in the family.)

Some may however think that I am exaggerating, and that a more pragmatic view is called for. In fact, several justice theorists tend to adopt a third fall-back position: that whether we find a justification for its necessity or not, there is no need to radically question the shared assumption that the family is the adequate locus for rearing children. They maintain that the severe limitations and constraints imposed by the family on the reach of principles of justice can readily be accepted by the least well off, provided two main types of guarantees are in place. The first is that some later redistribution occurs, e.g. according to Rawls' difference principle. The second is that the family should not be placed in an alleged 'private sphere', beyond the reach of the principles of justice. They therefore insist that family matters should not be treated as private or internal matters, and that each family member should be guaranteed individual privacy, and rights and liberties.<sup>6</sup>

If these guarantees are secured then, so it is claimed, those with lesser life chances can accept a diminished justice. An immediate problem is: how diminished? Egalitarians and feminists (these are

6. This does *not* mean that each family be ordered according to principles of justice. It simply means that families are subject to the same legal constraints as other groups and associations in the overall society.

not exclusive categories) have both insisted that quite a lot of injustice will follow. Not only the pattern of burdens and benefits, but people's attitudes, their capacity to form, revise and pursue a conception of the good, are affected by early socialization in the family in such a way that the redistribution and regulation, whilst necessary and important, will only marginally affect the enduring effects of this initial inequality in peoples' circumstances. On the other hand, on pains of allowing abhorrent state interference, early equalization cannot be secured by imposing on each family the duty to socialize their children in just the same way.<sup>7</sup> (One of the reasons many people do intensely desire to have children is their being able to bring them up as they see fit, with the values and practices they believe are good, and it would take intense and perhaps futile coercion to prevent them to do so.)<sup>8</sup>

So the worst off in the distribution of benefits and burdens, those who have fewer opportunities for realizing their capacities and for forming and pursuing their own conception of the good life, may have a reasonable complaint against the existence of the family, even when the suggested guarantees are in place. A more robust defence of the family seems therefore called for, against the idea of its abolition. Perhaps the only way to be able to decide whether or not justice would require us to abolish families, is to inquire whether the severe constraints their existence imposes on the reach of the principle of fair equality of life chances is justified by another, prior principle.

In the next section, I will turn to examine whether the family should be deemed necessary by a prior and independent principle of justice in this way.

### III

What are then the compelling reasons, if any, for *not* abolishing the family?

It is a familiar thought experiment for political philosophers to imagine what things would be without a state, to reflect whether

7. I think this is the dilemma Susan Moller Okin's comprehensive liberalism and conception of justice within the family would lead to. (For her own version of the differences between her position and Rawls's, see Moller Okin 89 & 94.)

8. Intense coercion can be futile, if it operates against people's most firmly held beliefs. This is why inquisitors of all sorts fail authentically to 'convert' some of their victims.

we need a state, and which form, if any, it should take. In a similar guise, we could imagine parties in a sort of Rawlsian original position carrying out this thought-experiment with respect to the family, to decide whether the family is justified, if at all, and what form, if any, it should have. Admittedly this is not a thought experiment envisaged by Rawls himself, but it need not strike us as anti-Rawlsian. The question parties would examine is how the major social institutions within the overall society fit together, so that the principles of justice independently arrived at in a prior stage of inquiry are effective. It is in this context that the existence of the family and its permissible form, or forms, if any may be envisaged.

Let us add that setting up such a thought-experiment means that parties would neither be heads of families (or parents), nor have the special ties of sentiment that in families parents often have towards their off-spring. Again, although Rawls does not explicitly stipulate these conditions,<sup>9</sup> they nevertheless do not contravene the main aspects of his theory. The parties in the original position are not making agreements embedded within the institutions of the basic structure, such as the family, because their agreements concern those institutions themselves. The appeal of the deduction of principles of political justice behind the veil of ignorance is precisely that bargaining advantages that arise within institutions of the basic structure, such as the family, are removed. The point of view of the parties therefore actually needs to be disassociated from, and not affected by, families as we know and experience them.

The parties could then envisage a set of possible social worlds, and in particular contrast two of them. In the first model, the family in some form would exist. No difference needs to be made at this stage between different forms be it, say, the biological mum-dad model, homosexual adoptive lines, or small communities such as those formed by kibbutzim. A family is thus any social unit in which a group of elders are primarily responsible and have primary authority over a *particular* group of children. The distinctive feature of a society in which children are raised in families is thus

9. Indeed he began by stipulating opposite conditions: that the parties should be either heads of families, or genetic lines, etc. (1971, e.g. pp. 128–129 and 462–463).



that children are looked after by different groups of elders, with different criteria and resources in each instance.

The second model would be constituted by a generalized, well-run orphanage. The adjective 'well-run' may produce some disconcert. The extent to which the orphanage is to be considered well-run is the following: since the state has overall control, it is able to equally guarantee to all children whichever conditions and principles are considered optimum for their upbringing, *as long as* these conditions are compatible with such an overall control. It could be imagined as a generalized boarding school, with a comfortable material environment, and well-qualified teachers, able to devote individualized attention to children. These teachers could take pride in the achievements of their pupils, but would probably not have the sort of personal investments that parents generally have. To the extent that they do not see their pupils as a prolongation of their own person in the same way as parents tend to do, they would probably have less fixed ideas, for example, as regards the orientation they should take professionally. (Often parents try to attempt to live an additional life through their children.) Teachers would also be explicitly bound by a principle of impartiality, or at least fairness, between their pupils. You may disagree with my idealization of boarding-schools—imagination and tastes differ here—but the idea of the well-run state institution for the upbringing of children should by now be sufficiently distinct from, say, a Dickensian home, to be able to proceed.<sup>10</sup>

So would the parties choose the former model, would they prefer the family? Rawls himself seems to think so. ('The family in some form is just.') But we have seen that the instrumental justification he gives, that is that the family is necessary for moral development, does not by itself seem sufficient, especially from the perspective of the least well off. For what this justification shows is at best that the utilitarian sum of the interests of all human beings counted equally will best be served by the persistence of the family. The reason this argument is generally not challenged, even by critics of utilitarianism, is because we tend naturally to

10. The idea of a well-run orphanage may still appear unduly eccentric. This is because there appears to be a consensus in popular opinion about the role of the family concerning children. But one needs only think of care for non-children (e.g. the elderly) to realize that contemporary societies are in fact moving quite fast in some areas towards a very imperfect realization of 'well-run orphanages'.

support the family on the basis of consequential considerations of just the same sort. One such consideration invoked at least since Aristotle is that we are naturally attached to our offspring, and therefore on average take better care of them. Notice that, since it is impossible to discern whether people care for their offspring because of societal moral and legal expectations, the argument is again inconclusive.

Here is precisely where the advantages of situating the question in a broadly Rawlsian context become apparent. Firstly, the heuristic device of the veil of ignorance generates less contingent reasoning. Secondly, the priority of principles of justice focuses the diffuse problem of the desirability or otherwise of the family on its compatibility with principles of justice, such as the above considered principle of fair equality of life chances. (The precise question then becomes whether the family can fit together with other major social institutions within the basic structure of society, so that prior and independent principles of justice would still be operative.) And thirdly, the lexical order in which principles are placed allows us to consider whether trying to eradicate the family in order to deliver equality would threaten a prior principle of liberty.<sup>11</sup>

The third characteristic is the one that matters particularly now, given the constraints the family poses on meeting the principle of equality of life chances that were explored in previous sections. For if we hold that liberty should not be sacrificed for the sake of greater equality, and if it can further be shown that abolition of families would pose an unavoidable threat to the equal liberty of citizens, then we would have found a reason for *not* abolishing families, regardless of their effects on equality of life chances. If on the other hand no such compelling reason can be found, then the case for a state well-run orphanage could look strong.

Here is one way of trying to make the family-cum-priority of liberty argument. People desire to bring up their own kids as they see fit. It would therefore not be legitimate to constrain them into not doing so. But this is clearly insufficient. Surely, that people are constrained into not realizing some of their aspirations does

11. Some may disagree with carrying a thought experiment thus constructed. It is my contention here that it can be adopted even by most of those who are no friends of Rawls. But I may be wrong about this.

not by itself constitute a violation of the principle of equal liberty. If these constraints are necessary for protecting the equal liberty of others, then they are clearly legitimate. In fact, extensive limitations on authority of parents over children already exist, just for this reason.

A second, more plausible, line of argumentation would be a revised version of the role of the family for moral development. The claim would be that in the orphanage, children would not be able to develop their moral powers even to the *minimum* degree for them to ever make full use of their equal liberties as citizens. If children in the orphanage never reach this minimum level, then even if the least well off in it are better off than the least well off in the family, forcing everyone below an adequate threshold of moral development for citizens to be free would hardly make sense.

Why would the family do better at this (if unequally so)? Well, probably because in most cases children in families are treated as ends in themselves, they are cared for as the special person they are, intimate relationships and the language of affection connected with it constituting a force of individuation. (Interestingly, this would make the family a necessary locus of cultivation of the modern value of individuality.) The thought would be that children need to be treated partially, as the singular person they are, in order to flourish and fully 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' (Rawls, 1993, p. 309). This seems persuasive enough but then, why would an orphanage, *if well-run*, fail to provide this to a minimally adequate degree?

Clearly, we are here again touching matters that can perhaps only be settled by empirical research. But there is yet a third line of argument that partly stems from this, and that need not be so contingent on empirical knowledge. For I have assumed until now that the orphanage should be *well-run*. The question is: how probable is that, were the family to entirely disappear? Would not my fantasy of a generalized boarding school with teachers devoted to the individuality of each child vanish, were the state to have the *sole* control of the upbringing of children? Wouldn't it be the case

that children would then be brought up not as ends in themselves, but as mere means for a collective purpose?

Bertrand Russell, the only modern philosopher I have found who contrasts advantages of entirely state-run institutions for the upbringing of children with the family, suggests precisely this argument. Teachers may, says Russell, retain something of the personal feeling that parents have, but the power belongs to administrators who are likely to ‘regard human beings, not as ends in themselves, but as material for some kind of construction. Moreover, the administrator invariably likes uniformity. [...] Children handed over to the mercy of institutions will therefore tend to be all alike, while the few who cannot conform to the recognised pattern will suffer persecution.’ (1929, p. 141.) It is not necessary to adopt the particular distaste Russell displays for administrators to see the force of his argument: if the state had, generation after generation, the *sole* control of education and care of children these would be less likely to be treated as ends in themselves, they would be forced into occupations, whether they find them worthy or not, and the development of their individuality would be threatened. This would interfere with their capacity to form their own conception of the good, and with their liberty to conduct their life as they wish.

Note that this need not commit us to a romantic view of the family: pressures for uniformity, and threats to individuality and individual privacy can and do occur within it.<sup>12</sup> Rather, what we have seen is that the entire dependency of infants makes them extremely vulnerable to domination. If submitted to the absolute authority of any single institution, be it the family or the state, the coercive power of that institution becomes far too great to be compatible with liberty. Hence it seems that the best protection of

12. In fact Russell himself was diffident of excessive sentimentalization of family ties, and began his article by underlining that even such necessary protection as the prohibition of labour for children ‘was initially fiercely resisted on the ground that it would weaken parental responsibility’ (1929, 133). He also concludes by opting for state-run institutions, *were internationalism to ever be the case*: ‘[I]f an international government were established, capable of substituting law for force in disputes between nations... [it] could decree that nationalism in its more insane forms should be no part of the educational curriculum in any country. ... In that case, although the danger of too great uniformity and too severe a persecution of freaks would still exist, the danger of promoting war would be eliminated... The conclusion seems to be that the substitution of the State for the father would be a gain of civilisation if the state were international, but that so long as the State is national and militaristic it represents an increase of the risk to civilisation from war. (1929, 142)

individuality against domination is the *respective* restrictions that state and family impose on each other. (So if this is a defence of the existence of the family, it is also an argument for not allowing it all the power over children.)

There is an additional and complementary aspect in Russell's observation. Implicitly, he is suggesting that the diversity of families makes it possible for the worth of different ways of life to be available as options, and hence creates the conditions necessary for pluralism. By implication, the idea is that in societies where there are families the variety of these is creating conditions of pluralism *even* for people who do not live in families. For there is a fundamental difference between the generalized orphanage and the current 'mixed economy' between orphanages and families. Even for people brought up within orphanages, the existence of families creates conditions such that the diversity of forms of life is available in society, and that individuality is to some extent valued and cultivated. But these conditions might not obtain if administrators were themselves brought up within the generalized orphanage, over many generations.

I believe that these two aspects combine into an argument in favour of allowing the perpetuation of the family, one which seems enough for not adopting the second model. For it is possible that *if generalized over many generations* an orphanage could not be well-run; that denial of individuality, lack of respect of individual self-determination and pressure for uniformization would combine in such a way that children could not develop their moral powers even to the minimum degree for them to make full use of their equal liberties.<sup>13</sup>

To summarize. There is a tentative but strong enough reason for thinking that the family should not be abolished. This reason is that the complete abolition of this institution would probably pose such extreme threats to individual liberty and capacity for self-determination, that it would defeat the very purpose that made us envisage its substitution by a well-run orphanage. For this purpose was to deliver greater equal opportunity for all to make their own

13. I express this conclusion in tentative terms. I am unaware of any way in which the state might be able to use the orphanage, if generalized generation after generation, to generate the minimum conditions for liberty and diversity. But it is not inconceivable that some might want to make this case. I therefore grant the existence of a potential theoretical position for any enthusiastic defender of the generalized and well-run orphanage to explore.

judgment about what constitutes a good life, and to live accordingly.

In the next section I will explore what I take to be the main theoretical consequences of holding that the family should not be abolished for this particular reason.

#### IV

The first thing to notice is that the above defence of the persistence of the family is a very limited one. It is justified by the greater evils that would (possibly) be created by forcing its disappearance.

Observe that whilst thin, this defence of the justice of the family has immediate and powerful effects on the conception of justice *within* the family. For it works only in so far as the family does not threaten the very value its persistence is deemed to protect, namely the enabling of each person to develop her individuality and to make her own decisions about how to conduct her life. So it commits us to thinking that it is not the family, or to be more precise family autonomy, which should be protected by legal institutions, but the conditions for the autonomy and private life of each of the individuals within it.

But some may think that this does not obtain, for they will disagree with the instrumental defence. They will protest ‘This is hardly why we value families.’ And surely, something rings true about this complaint. We do not have children so that they enjoy greater liberty. Nor do we think that the main important effect of the affection that we devote to them is their greater autonomy. We think that we are united to them by intimate, unique and precious ties of sentiments. I therefore agree with this intrinsic defence, but I think that if meant as an objection, then it misconstrues the point of the discussion so far. For the question initially posed was not ‘What, if anything, is valuable about the family?’, but rather ‘Is the family to be abolished?’ Since it is asked from the perspective of justice, the question concerns primarily the extent and content of just state coercion, as well as its effects. A more extensive version of it would be: ‘Given the unjust effects of the existence of the family, would justice imply using the legal and coercive apparatus of the state to discourage people from forming families, and to substitute families by a generalized well-run orphanage?’ The answer is no, because the risk of harming the principle of

equal liberty is too great. So whilst this answer only works if one accepts the *independent* priority of liberty, it says nothing about whether liberty and autonomy are values that we prioritize *within* families.

Hence whilst forceful the intrinsic defence of the family is irrelevant here.<sup>14</sup> Or rather, if it has any relevance at all, it is to reinforce the idea that state coercion is not permissible to enforce family ties at the cost of individual liberty. Let me explain. Since the answer to the abolition of the family is that it should not take place, then the question becomes: 'From the perspective of justice, what if anything can and should the state enforce regarding the family?' We may regard ties of sentiments as fundamentally valuable, but the reason they are so is that they are freely exchanged between people. Not only is it futile to try to foster love or friendship; even if it were possible, doing so might decrease their value. I might not value your friendship if I knew it to be the result of coercion. So a state in which sentimental ties are valued is a state in which there is no other legal intervention than to create the adequate conditions so that citizens can form and develop them freely when they so feel. Some may think that family ties are not quite like that, that state coercion is needed to encourage people to maintain them. But then, they distrust precisely the strength of these ties, and with it the intensity of their value and importance for many people.

I claimed earlier that from the perspective of justice, the laws that can be coercively enforced cannot be concerned with protecting the autonomy of the family as a corporate person, but only the autonomy and private life of each of the individuals within it. And I have added that whilst capturing something fundamental about the family, the sentimental view does nothing to weaken this claim.

What this claim amounts to, is that corporate persons such as the family should be of no concern for state legal institutions, other than their effect on actual persons. Does this mean that there is nothing that the state should do with respect to the two problems I described at the outset, namely the reproduction of a gendered division of burdens and benefits in the family, and the absence of

14. Notice that the intrinsic defence is not a *specific* defence of the family, since it applies to other relations, e.g. friendship.

equality of life chances between people raised in different families?

I will devote the next section of this paper to outlining why I think that this is not the case. There are, of course, general consequences of my argument for egalitarian debates (to the extent to which the unavoidable existence of the family in a just society blurs the distinction between brute luck and choices for which we are responsible). I shall however leave this question to another inquiry. What I want to do here, rather, is to focus more specifically on consequences of the argument delineated so far for policies which affect the family. My claim in the concluding section will be that rejecting a tradition-bound conception of the family as a corporate person helps making some concrete improvements in an egalitarian direction. This will take a little detour through the institution of marriage.

## V

I have delayed until now to say anything about the form of the family, from the perspective of justice. I want to suggest that it is the rigidity and the fusal character of the particular form or definition of the family with which state legislation operates which is partly responsible for the mentioned areas of injustice. The way it happens is the following: the assumption made, and enforced, is that the biological family is the only truly acceptable form. Other forms are very slowly and reluctantly accepted, but only when and to the extent that they are considered to successfully mimic the biological one. This in turn has several effects.

Firstly, the family is seen as a natural unit, a body in which legislative action can only very diffidently intrude (analogously to a surgeon loath to operate unless there is a serious disease that obliges her to do so.) As a result, work within the family is considered to be of a special type, which cannot be the object of legislation and restrictions which apply to any other association within society. This has traditionally particularly penalized women.

The second effect is that, because they are considered as an inseparable part of a special unit which is supposed to automatically take good care of them and protect them against hardship or misfortune, family members are not sufficiently



individually protected by legal rights. This lack of protection is apparent with regard to ill-treatment or prejudice within the family, but also conversely with respect to poverty by absence or withdrawal of family support. Hence the least well off in the distribution of burdens and benefits see their vulnerability increased rather than moderated by the existence of this legal conception of the family.

Finally, the traditional biological form of the family sanctioned by the state excludes other forms of association between adults from the legitimate exercise of parenting. For the cornerstone of this biology-bound legal conception of the family as a corporate person, with its anti-egalitarian and ostracizing effects, is marriage. Through legal marriage, links of affection are formalized in a contract restricted only to some, on no other basis than the fact that they are two adults of the opposite sex. A series of assumptions are then made: that the partners joined in this contract are well-suited to look after each other *and* after their biological children, and also that the resulting family forms a corporate person, with no serious conflict of interest between its members.

To summarize: what we have seen is that the coercive apparatus of the state is at fault with regard to the family in two directions. Firstly it legislates by effectively imposing a license for parenting which is not based on any relevant test, which has ostracizing effects, and which upholds and reproduces a gendered-biological conception of the proper family. Secondly, the absence of full individualized legal protection within the family leaves the most vulnerable subject to abuse, coercion and/or poverty.

Three main legal moves are therefore called for. The first is not to treat the family as a corporate person, but as a non-mandatory association. As such, the family could take several forms, but rights, including rights to primary goods considered necessary for a person to form, revise and pursue her conception of the good, would in any case be granted to individuals, regardless of their family status.

The second, related move is not to treat the family as an implicit provider for the supply of welfare, and to institutionalize instead impartial and individualized care by the state (this includes welfare rights, but could also take the form of a universal basic income).

This approach seems to me to have an important positive effect, namely that there is then no urge to impose on all families a comprehensive liberal conception of just relations within it. If the family is based on affection rather than on transfer of goods and resources, and if work within it is submitted to no more and no less legal constraints than in any other free association,<sup>15</sup> then any form, traditional or otherwise, is legitimate, as long as it is compatible with the above mentioned individual rights.

A third and complementary move is to abolish marriage *by the state* (not any other form of marriage). For either state marriage has the effect of aggregating family members in matters of rights and access to advantage, with greater resulting vulnerability of the worst off, or it is a mere ritual, with segregating effects. Where it conditions access to advantage, 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. For some, this ritual has considerable meaning, for example for religious or sentimental reasons, and they will continue to organize public occasions in which they will declare their union. But state 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.<sup>16</sup>

The conclusion of my argument is therefore that if principles of rights are elaborated with the interests of the worst off at heart, the family should not be abolished, but that state marriage should.<sup>17</sup>

You may now say: ‘Look, you have taken the typical route Kantians are so apt to go down, by always wanting to privilege impartial values and individual rights. This is going to lead us to an estrangement from and a devaluation of our most intimate

15. 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 just means literally this: that constraints which apply to all associations in this respect should also apply to the family.

16. Notice that this argument is perfectly compatible with the fact that civil contracts between individuals for legal trusteeship, economic transfers, et cetera, continue to be passed.

17. Some may object that this is hardly enough, since parents will still be able to donate their wealth to their children. My position here is that where marriage conditions access to right and advantage its abolition is a *necessary* measure, not that this is *sufficient* to achieve a just distribution.

emotions regarding those we most care for; this will further lead to a society in which people will be encouraged to act towards everyone out of duty, and not on such natural humane feelings as sympathy or compassion.'

But as I tried to show earlier in this paper, assuming that removing a legally enforced family bond is going to weaken the fondness family members have for each other, to result in estrangement, and in the sterilization of humane feelings shows remarkably little confidence in the strength of those sentiments. This said, perhaps a last clarification is called for. Ultimately, my claim in this paper is that we should displace most of the *expectations* for securing material impartial care for the needs of individuals to the state. The aim is for affection not to be enforced (which is futile), nor assumed (for it fails). If political institutions fulfil their impartial role, the family can then be the realm of the genuinely affectional, not a fallible refuge which increases the vulnerability of the worst off.

## VI

Maybe all I have said will strike some as a way of announcing the death of the family, at least in effect if not in intention. The family may change so significantly that we may not recognize it. But isn't that probable anyway? Innovative family practices happen all the time. The family strikes us as an immutable institution *because* it changes constantly. Contrary to what is commonly assumed, it is the instability of social understanding of what constitutes a proper family, and proper family relations, which has allowed for the persistence of the family as a strong and meaningful institution over time. From the perspective of justice though, some of its more interesting mutations are still to come.

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