

How Ought We Treat Family in Political Liberalism?

Implications of the Separation of Parent-Child Relationship and Marriage

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Abstract

This essay intends to place family into Political Liberalism according to the debate among Okin and Rawls. I suggest the reconsideration of family as consisting of two distinct aspects – adult relationships as private associations and reproductive relationships between children and their parents as an institution of the basic structure. This enables to address concerns about effects of a gender biased society without implementing comprehensive doctrines in the political sphere. I criticise common justifications of state supported forms of adult partnerships. The replacement of reproductive relationships within the basic structure suggests a priority of basic rights of future citizens over parental rights.

* I want to thank Alex Voorhoeve for his helpful comments. I'm grateful to Jan-Willem van der Rijt, Lukas Beck and Aline Biedermann for their thoughts on earlier versions of this essay.

I. Rereading the Debate Between Okin and Rawls

John Rawls' Political Liberalism is motivated by the idea of developing principles of justice within a society of equal and free individuals. He identifies the basic structure, the main social and political institutions and their distribution of social goods, as the scope within the principles of justice are to be applied. By distinguishing between political and private spheres of life, the individual is perceived as a private person enabled to enter and exit associations on the one hand and as a political citizen on the other side.¹

Susan Okin's writing addresses the question of whether the Rawlsian framework sets women and their children in the position of free and equal citizens and if Political Liberalism can provide a basis for overcoming contemporary effects of gendered oppression.² By identifying the family as the 'linchpin'³ of persisting gender inequalities, she challenges the sharp demarcation between the public and the private in Rawls work. She advocates for a direct application of the principles of justice to familial relationships.⁴ Four aspects of the mechanisms of the gendered family can be condensed in order to illustrate her argument: The denial of equal rights by legal unification of spouses (1) and the 'gendered division' of labor and its anticipation (2) refer to the first part of Okin's critique: Political Liberalism fails to consider women as free and equal citizens. The Political Virtues argument (3) and the Incongruence argument (4) pose a threat to the consistency of liberalism by questioning the system's stability.⁵ The latter criticises the ambivalence of imposing great importance on the human psychological development in order for society to be stable on the one hand,⁶ but putting almost no emphasis on

¹ Rawls, *Political Liberalism* 48-54.

² Okin, 'Reason and Feeling in Thinking about Justice' 229.

³ Okin, *Justice, Gender and the Family* 138.

⁴ Okin, 'Forty Acres and a Mule' for Women: Rawls and Feminism' 242-244.

⁵ deWijze, 'The Family and Political Justice – The Case for Political Liberalisms' 260-264.

⁶ Rawls, *Political Liberalism* 81-85, 140-144.

the circumstances of their development on the other.⁷ The Political Virtues argument focuses on two particular requirements to be an autonomous citizen. She needs self-worth in order to promote her interest in the public and must be able to accept the burdens of judgment in public discourse.⁸ Women in particular will lack a conception of the self as a virtuous person in the public deliberation when growing up under sexist comprehensive doctrines in the private sphere.⁹

Rawls argues in response to Okin that the private/public distinction leads to the wrong line of demarcation between the institutions of society. Family must be integrated into the basic structure by its reproductive function.¹⁰ Nevertheless he differentiates between two kinds of institutions within the basic structure: political in contrast to private associational. The first refers to institutions in which we can only enter by birth and exit by death and hence, demands the principles of justice to be applied directly into its internal structure. The second group sees the principles of justice applied on its structure. Rawls identifies family as belonging to the latter because it is a voluntarily chosen group membership for the sake of living reasonable comprehensive doctrines. Thereby, he argues that one ‘would not want the principles [to] apply directly into the internal life of our associations.’¹¹

In this essay I argue that both, Okin and Rawls, fail to place the conception of family properly within the framework of Political Liberalism. First, I propose a separation of the entity ‘family’ into two distinct aspects: adult relationship (e.g. marriage) and reproductive aspects in the parental-child relationship. Conversely, this distinction will lead to the placement of adult relationships in the associational-private realm. On the other hand, the analysis of the parent-child relationship outlines its influence on the basic structure. The replacement of the reproductive aspect of family life will result in suggesting the adaptation of a child-centred approach to parental rights in order

⁷ Okin, ‘Political Liberalism, Justice, and Gender’ 27-30.

⁸ Rawls, *Political Liberalism* 54- 58.

⁹ Okin, ‘Political Liberalism, Justice, and Gender’ 37-40.

¹⁰ Rawls, *Justice as Fairness: A Restatement* 162-168.

¹¹ Rawls, *Justice as Fairness: A Restatement* 165.

to prioritise parents' obligations over their interest.

II. The Legal Separation Between Adult and Parent Child Relationships

Both Okin and Rawls put emphasis on describing the effects of the gendered family on the society but both neither explicitly define the core aspect of the term 'family' nor justify its standing as a distinct institution.¹² Instead, they vary in using marriage, shared household and parenting synonymously. In order to place family within the framework of the basic structure, Okin uses all three of the characteristics in her argument. Rawls focuses only on reproductive aspects for justification. Hence, the two of them implicitly use different premises: Rawls argues that the core characteristic of family consists of reproduction and Okin subsumes both, adult relationships, such as marriage in shared households, and reproduction as being necessary components in talking about family.

Both are wrong in approaching the conception of family in this way. It is very questionable to use a single conception for the term 'family' at all. In a liberal society, one would expect citizens to deliberate on a definition that would be used for policy and law making. The mere empirical observation of children being born out of or within marriage and what counts as an adult relationship might be sufficient for an objection here and leads us to analyse the standing of relational and procreative aspects of family separately.

III. Adult Relationship as Private Association

Considering family as marriage in adult relationships will imply its placement in the associational realm of the society. By following this understanding of family, one might wonder why the state should provide for and protect this institution at all; and secondly, why feminist critique on Rawls should not take into consideration other forms of commitment other than marriage. These questions shall be discussed in the following section.

¹² Metz, *Untying the Knot* 73- 83.

Marriage contains two rather uncontroversial defining components; it is an agreement among adults who voluntarily choose to enter and exit the institution. Both parts of the definition are essential for liberalism to respect the parties as equal and free citizens. Like other forms of associations, the content of the agreement plays a subordinated role, as long as basic rights are not violated and the right to exit is not endangered. All further narrower definitions will end up in illiberal lines of argumentation. It would be possible to take the monogamous heterosexual relationship as being the ideal standard of a marriage and to use it as an optimal account for accomplishing human flourishing and care provision within this private association. This would require an overlapping consensus in the deliberation among citizens, but the case of marriage is not and has not been perspicuous and is a centre of debate whether it supports all individual comprehensive doctrines in the society or not. Like Brake points out, the core of marriage has always been an issue of philosophical debate in the past.¹³ Today, care-networks, polyamorous relationships and asexuals may legitimately ask why the state provides recognition for dyadic (homo- and heterosexual) relationships but not for others.¹⁴ Additional, an overlapping consensus requires a possibility that the state has any relevance in marriage, monogamy, same-sex-marriage or any approach to offer the possibility of right and asset share in a single institution based on comprehensive doctrines of the good life. To discuss whether these problems will lead to the abolishment of legal recognition of adult relationships or to a limitation of its conceptions, is not of major importance for this contention.¹⁵

I conclude that Rawls is right in limiting marriage and adult relationships in the same way as churches, companies or private universities as associations, although it is a topic of debate whether the state shall prioritise certain forms of adult relationship over others at all. This account of an associational character of marriage and civil union neither justifies actions that limit the possibility to exit, nor measures that do not consider the partners' legal

¹³ Brake, *Minimizing Marriage* 14-20.

¹⁴ *Ibid.*, 65-108.

¹⁵ Chambers, 'The Family as a Basic Institution' 134-143.

independencies from each other. Thereby, the first two principles of Okin's critique, according to the inequality in rights and labor, are considered and confuted. Nevertheless, this means that partners legally may have full status of equal citizenship but believe in a comprehensive doctrine that promotes an unequal status among them. Okin criticises that the political virtue and the incongruence argument may bring women in a position to live in such ambivalent conceptions of themselves.¹⁶ They may end up assigning their disregarded status in the partnership to the public realm and will lack self-respect in articulating their own conception of the good.¹⁷ I reply that these problems primarily arise out of socialisation during childhood within the reproductive aspect of family and should be solved in that sphere. I take political virtues, once developed in childhood, as constituting a degree of stability in the personal character and are not endangered to be lost through marriage. In addition, although the 'indirect pressure' in the private may play a significant role in reality, a tool to measure it is required. Defining a threshold between unjust pressure and just influence on women initiated a necessary debate on the concept of adaptive preferences that lies beyond the coverage of this essay.¹⁸

IV. The Child Centred Approach: Implications of Placing Parenthood in the Public Realm

The consideration of only reproduction and parenting in family separately leads us to push family back into the realm of the political institutions of the basic structure. The qualifying criteria for entry and exit to and from the basic structure are birth and death. Hence, the requirement of arbitrariness, which finds recognition in the ideal theory of the veil of ignorance, plays a constitutive role at this point. From the child's perspective, the birth in any particular family is as arbitrary as other factors. Furthermore, it is the con-

¹⁶ Okin, 'Reason and Feeling in Thinking about Justice' 173.

¹⁷ Rawls, *Justice as Fairness: A Restatement* 59. Rawls, *Political Liberalism* 77.

¹⁸ For a discussion of the role of adaptive preferences on autonomy in the context of marriage review

stitution for many other factors like genetic outcomes, region of birth and social status during childhood. Rawls' argument of establishing all aspects of the family in the associational sphere is rightly criticised by Chambers as a red-herring.¹⁹ The treatment of parent child relationships cannot be justified by the parental interest in living a life according to their comprehensive doctrines, even if this will further their human flourishing. Rawls outlines earlier: the basic structure is not an association because it is structurally distinct in its entry by birth and by its missing ends of comprehensive doctrines.²⁰ Consequently, associational and political parts of the family have to be regarded as distinct when applying legal and policy questions.

In addition to his distorted setting of the familial institutions within the basic structure, Rawls' account faces a second criticism on the constitution of the parent-child-relationship. The ultimate prioritising of adults' interests over the child's in Rawls' work conflicts with his conception of 'basic rights as equal citizens'²¹ during childhood. These universal rights contain aspects of welfare and integrity of the person and cannot be limited by adults' interest. Rawls ambivalent conceptions in the moral status of the person during childhood may be called parent-centred perspective. It perceives children as parental property since Rawls priority of the adult privacy is not justified by the effects it poses on the child's development. Once agreed that the two domains of the family are not one entity, the conflict of autonomy between the adults' interest in their living of a comprehensive doctrine and the child's interest of moral development diminishes. In case of conflict of the political basic structure and private comprehensive doctrines the first sets constraints on the latter. Hence, the paradox of restraining the parents' autonomy by intervening in the private sphere in order to prevent the future autonomy of the child is indeed not a paradox, because parents never possessed the right to impose their comprehensive doctrine on the child if it endangered its moral development in the first instance.

¹⁹ Chambers, 'The Family as a Basic Institution' 76.

²⁰ Rawls, *Political Liberalism* 40.

²¹ Rawls, *Justice as fairness: A restatement* 166.

Nevertheless, one may identify the particular problem that children cannot yet possess and sue for their own rights based on missing capacities. If this would be true, it does not follow that the child does not have rights. It is the state in its guardianship position of the child's moral development that allocates the entitlement for parental rights to the adult. The reproductive aspect of the family's standing in the basic structure may be redefined as a transfer of rights by the state that is in guardianship of the child's moral development.

The evaluation of the implications on adult partnerships proved, that Rawls' policy recommendation goes along with what follows out of the separation of the two spheres of family life. This is different for the case of the parent child relationship. The political character of the child's development is defined by the society's interest in the child's development. Rawls reduces the scope of application of the interest only to the function as freedom of abuse and equality of opportunity (e.g. equal basic rights for primary education for girls and boys in their welfare rights).²² However, his conception of the human moral development requests more than that. In order for one to acquire the features of being reasonable and having moral sensibility, Rawls introduces four conditions: willingness to cooperate in the society, the recognition of the burdens of judgment (acknowledgment of different reasonable comprehensive doctrines than one's own), self-respect, and a moral psychology with capacities for rational argument.²³ In order to develop all four of these conditions a society finds an overlapping consensus on the question of how this may be achieved. A discussion of these means seems not to be necessary in detail here, but what can be assumed to find consensus, is that moral development requires a learning process that relies on the parental capacity to teach. Especially the first two features are directed to society and require a learning process independent of the family. Learning to take part in the public discourse includes having learned the rules in a space where one meets others with different conceptions of the good. This is what I call the positive

²² *Ibid.*, 165.

²³ Rawls, *Political Liberalism* 81.

requirement of the public space for the child to learn. The negative requirement, which citizens will agree on, is the child being in need of a place where the development of self-respect is supported. Surely, not every child will be raised in conditions that pose a threat to the development of this feature, but with the public sphere, we might introduce an instance of control that will lessen concerns about the moral problem, called adaptive preferences, that is connected to Okin's concern about the effect on the child living under sexist comprehensive doctrines. What practical implications can my argument pose on adult's sphere of authority? One may advocate for the abolishment of private or ecclesiastic schools, as the common education of religious thought in these institutions and under certain empirical restraints the duty to use public daycare.

Conclusion

This essay provides a concept for the integration of the family within Political Liberalism. It addresses feminist concerns about the threats of the gender-biased society and develops an argument to consider adult-relationships distinct from the parent-child framework. The legal and moral separation of the two aspects leads to adaptations of both Rawls' and Okin's recommendations. I argue that the scope of rights and acknowledgment of particular adult agreements like marriage and civil unions must be infringed. Furthermore, the integration of the reproductive aspect of the family speaks in favour of a child-centred approach to their rights.

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