

# RAWLS'S NEGLECTED CHILDHOOD: REFLECTIONS ON THE ORIGINAL POSITION, STABILITY, AND THE CHILD'S SENSE OF JUSTICE<sup>i</sup>

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## INTRODUCTION

Rawls's attitude toward children displays a rather ironic sort of neglect. Though he spends several chapters of *A Theory of Justice* exploring the empirical details of the development of moral reasoning in childhood, he pays almost no attention to the moral status of children. This neglect of questions of children's rights and justice within families in a 586 page book which aspires to articulate a complete theory of distributive justice, or in *Political Liberalism*, the 371 page sequel that was meant to correct and further develop the initial theory, is really quite remarkable.<sup>ii</sup> This paper argues that Rawls's omission is a serious one, both in terms of concern for children and in terms of the status of the proposed theory of justice. Part I examines the problems for children which follow from Rawls's omission of them in his version of the social contract. Part II examines the one place in Rawls's work where children do have a role, in his account of moral development.

## PART I: REFLECTIONS ON THE ORIGINAL POSITION

A theory of justice is incomplete to the extent that it does not address the question of the moral status of children and obligations we have towards them. This is not to say that it is a criterion of a theory of justice being a complete theory of justice that it develop a *particular* view about the moral status of children and of our associated obligations. Rather, a theory of justice, to be a complete theory, must acknowledge and address the issues.<sup>iii</sup> Yet, in the case of Rawls it seems reasonable to expect more, to expect an account which pays special attention to the welfare of children. After all, there is much sympathy on Rawls's part for the people who are the least advantaged in society and surely the children of the least advantaged adults are even more vulnerable than the other members of their families.

How is it that Rawls leaves children out of his conclusions about the just society? This paper argues that the neglect of children in Rawls's theory of justice is no accident. Instead, the paucity of conclusions about justice and children follows from Rawls's version of the social contract as it is presented in both *A Theory of Justice* and later revised in *Political Liberalism*. Although the neglect of children is a feature of both books, it will be argued that changes made to the theory in *Political Liberalism* make possible answers to the problem of children's moral status which were not possible for Rawls's theory as it

is articulated in *A Theory of Justice*.

In *A Theory of Justice* Rawls assumes that the individuals in the original position are “heads of families” or alternatively are “representatives of family lines.”<sup>iv</sup> As feminist critics, such as Susan Moller Okin have noted, the result of Rawls’s characterizing the contractors in this way is that the question of justice within these families goes unnoticed.<sup>v</sup> While this may be an effect of Rawls’s assumption, Rawls’s motivation for The-Heads-of-Families Assumption is not to make the family immune to questions of justice. Rather, Rawls has as his goal solving the problem of justifying justice-based obligations to future generations. Just how The-Heads-of-Families Assumption is supposed to accomplish this will be taken up later. In *Political Liberalism* Rawls abandons The-Heads-of-Families assumption in favour of another solution to the problem of justice for future generations, making theoretical room to put forward a view about justice for children. Rawls does not put forward a view about children in *Political Liberalism* but one which is compatible with his more general view is suggested in this paper.

As has been noted, Rawls has remarkably little to say about children and the requirements of justice. It may be that in *A Theory of Justice* there is not much he can say, given The-Heads-of-Families Assumption. The first task then in evaluating Rawls’s theory for its potential as a theory of justice which speaks to the question of justice for children will be to see whether The-Heads-of-Families Assumption is indeed required. In *Political Liberalism* Rawls himself gives up the assumption, yet he does not go on to give an account of justice for children. And so our second task will be to see whether there are the positive resources in *A Theory of Justice* or *Political Liberalism* to develop a Rawlsian account of justice for children, even if it is not one that Rawls himself puts forward. Following the development of Rawls’s theory chronologically, we focus our attention first on *A Theory of Justice*.

### The Problem of Justice for Future Generations

Rawls famously argues that the principles of justice for the basic institutions of our society are those which would be chosen by contractors in the original position from behind a veil of ignorance. The veil of ignorance ensures that the parties to the contract do not know their place in society, class position or social status, their fortune in the distribution of natural assets and abilities, their level of intelligence and strength or even special features of their own psychology, the particular circumstances of their society, and what generation they will be in.<sup>vi</sup>

The purpose of the veil is to ensure that each person, not knowing what his or her circumstances will be when the veil is lifted, will be unable to choose principles tailored to her or his advantage.

But Rawls thinks that the neutralizing effect of the veil of ignorance fails in one important respect; it cannot secure justice for all persons. What group of persons is left out? Rawls thinks that the veil of ignorance is insufficient to eliminate bias against future persons, those people who will exist only as members of future generations. Why does the veil fail to make the choice impartial with regard to them? Rawls reasons as follows: “Since the persons in the original position know that they are contemporaries (taking the present time of entry interpretation), they can favor their generation by refusing to make any sacrifices for their successors; they simply acknowledge the principle that no one has a duty to save for posterity. Previous generations either have saved or they have not: there is nothing the parties can do now

to affect that.”<sup>vii</sup>

### The Solution According to *A Theory of Justice*

Despite the fact that rational, self-interested agents reasoning behind the veil of ignorance would not choose to save future generations, Rawls believes that we do have justice-based obligations to future generations. To ensure that parties to the OP would choose principles that would mandate just savings for future generations, Rawls changes the motivational assumption of strict self-interest in the case of future generations. Instead of being mere *individuals*, the parties in the original position are to be thought of as *heads of families*. Rawls writes: “The parties are regarded as representing family lines, say, with ties of sentiment between successive generations.”<sup>viii</sup> In short, the parties choose a just savings principle over a no-saving principle because, just as good parents care about their offspring, the parties in the original position care about generations to come.

### Criticisms of the Heads of Families Assumption

By assuming that the individuals behind the veil of ignorance are not mere individuals but rather heads of families, Rawls weakens his theory in two important respects. First, he restricts its scope. His theory of justice cannot address questions of justice between members of the same family. Second, it loses normative force because it bases obligations of justice on ties of sentiment. A discussion of both points follows.

How does it leave out issues of justice within the family? If the parties in the original position are seen as head of families, there will be no need for discussion about rules of justice that apply *within* the family. Even if we think of the contractors as family *representatives* concerned with the overall good of their families, rather than as simply the source of authority in the family as Rawls’s term “head” might suggest, there is still no motivation for the contractors to discuss rules that apply within their families. In knowing that they are the family representatives, the contractors do not have to worry that they will turn out to be less powerful family members when the veil is lifted. And so children drop out of Rawls’s contract picture entirely. At best the interests of children are represented by a parent (in the case of circumstances external to the family, say, in school) and at worst (in the case of their life within the family) issues concerning them are not part of the subject matter of justice at all.

In the course of comparing Rawls’s theory to that of Hegel, Jane English comments, “Apparently affection, intuitions and identification with the interests of others are supposed to obviate clearly defined principles for balancing conflicting interests within a sphere of love. By making the parties in the original position heads of families, rather than individuals, Rawls makes the family opaque to claims of justice.”<sup>ix</sup> To see the danger of this result for children, consider the following statistics regarding family violence: In Canada during the 1980’s, more than two-thirds of the child victims of homicide, for whom a killer was identified, were killed by a parent. Almost one-third of the children killed were under the age of one and more than 70 percent were under five years of age.<sup>x</sup> This statistic focusses our attention on children as victims of homicide but there are a myriad of other less severe harms to children which occur primarily

within the family, such as physical, sexual, and emotional abuse. While most families usually provide loving, caring, and safe environments for the children within them, this is not always the case. Further, it seems that insofar as a society fails to protect its children from harm, it will be *unjust*. This point deserves further elaboration. Children are persons and a just society cannot be one that allows a particular group of persons to be systematically harmed by other persons. The status of children as living within families should not exempt them from the protections of Rawls's own principles of justice.

Concerns about The-Heads-of-Families Assumption and the motivational assumption to which it is connected come from other quarters as well. Philosophers concerned with the moral status of women and children dislike the assumption because it makes the family opaque to questions about justice. But one might also dislike the assumption because it weakens Rawls's claim to have secured a just savings principle and justice for future generations.

Rawls attempts to ground obligations of justice toward all future persons from the care that actual heads of families feel for their descendants. But this attempt is problematic for three reasons. First, it is one thing to justify obligations of justice from actual caring, quite another to do so when that caring is absent. Recall, the analogy made between good parents who care about their offspring and the parties in the original position who care about generations to come. But, as we have read, not all parents are good. Not all heads of families care about other family members. Likewise, not all family representatives care about saving for future descendants. Second, even if the average person does care for their descendants, we can go on to ask about the limits of that care. How many generations into the future does our caring extend? It seems it will likely not be enough to ground obligations to persons in the distant future. These first two points raise questions about what follows from The-Heads-of-Families Assumption. But one can also reasonably raise worries about the motivational pull of the assumption. Third, even if most people do care about their descendants, what about those people who do not, either because they have descendants and do not care, or because they do not have descendants? Why should they accept requirements of justice which follow from The-Heads-of-Families Assumption?<sup>xi</sup>

In short, if guaranteeing justice for future generations means that we must assume that we already care about the fate of future generations, then Rawls's argument fails to achieve its task. Arguably, to the extent that we do care about future generations no requirements of justice are needed. To the extent that we do not care about future generations, we have no reason to assume that family heads or representatives behind the veil choosing principles of justice will care either. For a wide range of reasons (including the claim that it cannot be justified from self-interest) many moral theorists have rejected Rawls's view that justice-based obligations are owed to future generations.<sup>xii</sup> Yet, the claim that justice demands that we not use all of the earth's resources, leaving future generations with a planet unable to support human habitation, is compelling. We will return to a discussion of other routes to securing justice for future generations.

#### Connections Between Justice for Future Generations and Justice for Children

It is important to pause in order to clarify the relationship between the problem of justice for future generations and the problem of justice for children. On Rawls's view in *A Theory of Justice*, The-Heads-

of-Families Assumption is thought to solve the problem of justice for future generations. Unfortunately, solving the problem of future generations by making the contractors be heads of families makes it impossible for Rawls to address the problem of justice for children. On this way of thinking about the relationship between the problem of justice for future generations and the problem of justice for children, it is clear that the problems are distinct. Indeed, they tug in different directions since Rawls' method for solving one problem makes it more difficult to solve the other.

But there is another way of thinking about the relationship between the problem of justice for children and the problem of justice for future generations which draws our attention to what the two problems have in common. The problem of justice between generations and the problem of the moral status of children are related in that the most immediate members of the next generation are one's children. While one can note this interesting overlap in the membership of the two groups under discussion, it is important to realize that guaranteeing justice for one group does not help the other.<sup>xiii</sup> One could believe that future generations have moral status but that this moral status is only attained at adulthood. Thus, justice for future generations is consistent with the denial of children's moral status. Alternatively, one might believe that future generations do not count morally but that existing children do have moral status. Thus, granting moral status to children is consistent with a denial of moral status for future generations.

What, then, are the options? It seems they are as follows: First, we might keep The-Heads-of-Families Assumption and leave aside the question of justice and children. Second, we might remove The-Heads-of-Families Assumption leaving room available to pose questions about justice and children at the cost of leaving aside the answer to the problem of justice for future generations provided by Rawls in *A Theory of Justice*. Third, we might see if the problem of justice for future generations could be solved without The-Heads-of-Families Assumption. Using Rawls' method of reflective equilibrium, considering our theories in light of our intuitions about their implications, one might well choose to abandon his solution to the problem of justice for future generations in favour of solving the problem of justice for children. But if we can find a way to address the problem of justice for future generations which does not involve the Heads-of-Families assumption, then it might be possible for a Rawlsian theory of justice to address both issues. What follows is a discussion of this third option.

### Doing Without the Heads of Families Assumption

A number of attempts have been made to secure justice for future generations from contractarian foundations without The-Heads-of-Families Assumption. This paper will not attempt to review or examine all of them. Instead, three options are presented, the first suggested by Jane English, the second suggested by D. Clayton Hubin, and third put forward by Rawls himself in *Political Liberalism*.<sup>xiv</sup>

i) Jane English notes a number of possible difficulties with Rawls's version of the social contract, including the one we focus on here, Rawls's "present time of entry" interpretation of the contract. English argues that if Rawls gave up the present as the time of entry, then he need not have the parties be heads of families in order to justify long-term savings.<sup>xv</sup> Rather, self-interested individuals, not knowing what time in human history they are from, would choose principles of savings to equalize the earth's

resources between generations. <sup>xvi</sup> Rawls's reason for the present time of entry assumption is that he intends the standpoint of the original position to be useful in moral debate. It would "stretch fantasy too far" and exceed the limits of our imaginative abilities to consider ourselves as possibly being from any time in human history. <sup>xvii</sup> Rawls worries that if the contractors did have the full range of points of entry as possibilities, the contract device would cease to be "a natural guide to intuition."<sup>xviii</sup> But given the other leaps in imagination Rawls's proposal requires us to make (to imagine ourselves ignorant of our sex, for example), it is not clear that Rawls need resist this amendment to his theory. When we are considering the wrongness of using resources now, rather than saving for later, one way we do this is by imaginatively occupying the point of view of members of future generations and asking what they would think of us. And so it would seem that as Rawlsian moral agents we are capable of projecting ourselves imaginatively into the future.

ii) D. Clayton Hubin's suggestion is less extravagant, however it also has the result of securing a weaker savings principle than Rawls believes is required. Hubin argues that rational, self-interested individuals, reasoning behind the veil of ignorance, will choose a savings principle in recognition of the fact that they may be parents when the veil is lifted. Writes Hubin, "They will recognize that the possibility of their having children (and caring about their children in this way) makes it possible that in real life they will have a direct and vital interest in the conditions under which the subsequent generation lives."<sup>xix</sup> It is worse not to have saved for future generations and wind up as someone who cares about their children's inheritance of resources, than it is to have saved and wind up as someone who doesn't care about future generations. Rawlsian contractors acting to avoid the worst outcome will choose a savings principle, argues Hubin. However, Hubin notes that a savings principle justified by his argument will be weaker than one justified by Rawls's argument since Hubin's argument relies on the actual concern of parents for their children and grandchildren and this likely does not extend beyond a few generations.

Some people may object that Hubin's answer reintroduces The-Heads-of-Families Assumption since it relies on the contractors reasoning as heads of families would. But this is to misunderstand Hubin's suggestion. All Hubin needs is for the contractors to consider the *possibility* that they may be heads of families once the veil is lifted. This is consistent both with the contractors also considering that they may not be heads of households and with the function the veil is supposed to serve. It does not reintroduce The-Heads-of-Families Assumption

iii) In *Political Liberalism*, Rawls's characterization of the contractors changes dramatically. Rather than being "us" in any sense, we are told to think of the contractors in the original position as "our representatives." Rawls writes, "[T]he parties in this position are described as rationally autonomous representatives of citizens in society."<sup>xx</sup> He removes the stipulation that the representatives care for their descendants, or more properly, the descendants of those whom they represent, while retaining the "present time of entry" interpretation of the original position.<sup>xxi</sup> Instead, Rawls adopts a solution to the problem of justice for future generations which he credits to English, Derek Parfit, and Thomas Nagel. Rawls claims that the contractors must choose a principle of just savings which they would want previous generations to have also adopted.<sup>xxii</sup>

## Counting Children In

Which solution to the problem of justice for future generations is correct? In this paper we do not attempt to resolve this question. Instead, we assume in what follows that one of the above solutions is correct and that Rawls can secure some level of savings for future generations without The-Heads-of-Families Assumption. The next move is to see what can be gained in terms of accounting for children by not conceiving of the parties in the original position as heads of families. We can now ask whether there are answers to the problem of children that come from within Rawls's theory or that are at least consistent with Rawls's theory.

What are some alternatives to conceiving of the contractors as parents? If the contractors are representatives of individuals (as Rawls says in *Political Liberalism*), rather than representatives of families (as he says in *A Theory of Justice*), can children be included as parties to the social contract? The contrast between Rawls's theory with other contractarian theories is sharp when the characterization of individuals in the original position is considered. According to many other contemporary contractarianisms the contractors reach agreement by bargaining in full knowledge of their abilities and powers. For these theories the options for dealing with children are clear: either children count as parties to the contract or they do not.<sup>xxiii</sup> And in most cases they do not. The chief difficulty for including children in a contractarian account without the benefit of the veil of ignorance is motivational. Why would we (adults) need to make deal with children? From a purely self-interested point of view, what do they have to offer us? Suppose they did have something to offer that outweighed the costs of feeding and clothing them (say, their investment in a pension plan to fund our retirements) and that this alternative was superior than other arrangements we might pursue (say, investing directly into our own pension plans) why would we believe that they are rationally able to follow through on their deals?

But for Rawls the issue is murkier. With the contractors conceived of as individuals stripped of their individual identities (according to *A Theory of Justice*) or as representatives ignorant of certain facts about the parties they represent (according to *Political Liberalism*), it is not so clear what it would even mean for Rawls to include children. Consider the contrast with including women as contractors. Susan Moller Okin suggests that Rawls leave aside the assumption that the parties in the original position are heads of families. Instead, they are to be individuals, both men and women. For Rawls, one's sex is assumed to be something about which a contractor in the original position would be ignorant. And so it would appear that there is no difficulty thinking of women as parties in the original position. However, Okin notes that some feminist theorists have argued that women are different from men in their moral reasoning. If this view of differences in moral reasoning is correct making the contractors ignorant of their sex will not be sufficient for using Rawls's contract device for dealing with justice between the genders. We can either allow both styles of reasoning to be present which would defeat the purpose of the veil of ignorance, or we can allow in only one style of reasoning and assuming that standard is the male standard, leave women out. One might think that this problem is resolved when we move to thinking of the contractors as representatives. But it does not. The same problem re-arises only this time as it concerns

the gender of the representatives or their knowledge of which genders they represent.

Adding children as parties to the contract is even more difficult. The claim usually made about children and rationality is not simply that they reason differently. Rather, the claim is that they are not fully rational. If we imagine some of the parties to the contract being children, when we put them behind the veil and take away knowledge of their age what we are left with are less than fully rational agents. Without rationality it seems we are also without the normative force of the contract argument for we do not generally think that decisions made by irrational agents have standing. Adding an idealizing assumption that they are fully rational while still abstracting away from facts about their age, negates any positive impact of adding children as parties in the original position.<sup>xxiv</sup>

A related problem is that for Rawls the role the contract plays in his theory is not strictly foundational.<sup>xxv</sup> Rather, the original position is put forward as a heuristic device designed to formalize our thinking about justice. It is meant to support, rather than replace, the intuitive argument for his preferred principles of justice. The constraints on the original position are meant to be ones that we would recognize as legitimate constraints on moral reasoning. Rawls describes the original position as a “natural guide to intuition.”<sup>xxvi</sup> He writes that “it is important that the original position be interpreted so that one can at any time adopt its perspective.”<sup>xxvii</sup> We are to use the original position as a tool of moral reasoning by adopting the standpoint of a party in the original position. What would it mean to adopt the standpoint of a child contractor or think of oneself as the representative of a child in the original position?

Perhaps what’s required is not that one reason as a child but rather that one consider now what one would want if one were a child using the reasoning powers one possesses as an adult, or in the case of the representative consider what the child would want were he or she to reason as an adult. On this model, an adult reasoner is considering what’s in a child’s interests, but is not reasoning as a child to find that out. Is this a standpoint that could be imported into Rawls’s original position? In *A Theory of Justice* Rawls assumes that the point of entry for the contractors is “during the age of reason.”<sup>xxviii</sup> And so on his view the parties in the original position know they will be adults when the veil is lifted. If we take away this assumption (for which Rawls himself offers no arguments), then once the veil is lifted the parties might be at any stage in their life, from baby to teenager, from young parent to senior citizen.<sup>xxix</sup> The contractors would be forced to consider a whole life, cradle to grave, view of their lives. On this revised Rawlsian version of the social contract we think about what the world would be like, under various principles of justice, if we were at any stage in the life of any member of our society.<sup>xxx</sup> The result is that the contractors would have to consider the possibility that they might be children, or even new born babies, once the veil is lifted. Considering this possibility will motivate the contractors to make sure that such people are cared for properly.

One objection to this position might be that persons in the original position would figure out that they are not really children by noticing how sophisticated the reasoning was that they were engaging in. But this would be to misunderstand the veil of ignorance; the veil is really no more than a way of dramatizing a logical constraint on the kinds of arguments that can be properly used in determining whether or not a proposed principle of justice is in one’s interest when this determination is taking place in the



Original Position. The reasoning: “This principle benefits children and I am an adult so this principle is not in my interest,” is excluded by the veil because of the “I am an adult” premise.<sup>xxx</sup> On the representative model, this is even simpler to understand. The representative is a rational agent who does not know whose interests are represented, those of a child or those of an adult.

Clearly, the answer to the problem of justice for children proposed here is not Rawls’s view. But could a consistent Rawlsian accept this change to the construction of the original position? Something like this way of thinking seems to be behind Rawls’s reasoning about appropriate restrictions on liberty. In a discussion of paternalism, Rawls writes that, “We must choose for others as we have reason to believe they would choose for themselves if they were at the age of reason and deciding rationally.”<sup>xxxii</sup> That is to say that the right choice for a child is the choice a rational adult would have wanted made for himself or herself as a child were he or she in a position to so choose.

Some who are concerned with children’s moral status will not be satisfied. If the moral rules governing children are those decided on by rational agents, isn’t this equivalent to saying that children don’t count and that adults do? To put the question differently: Are contractarian theories which assume the contractors to be rational inherently paternalistic?

To respond to this objection we need to distinguish between paternalism at the level of moral principles and at the foundational level.<sup>xxxiii</sup> A theory can be based on the deliberations of fully rational agents, while containing requirements of justice which protect those who are less than fully rational. Such a theory may, in one sense and at one level, exclude children, while offering the best treatment of children’s concerns at another level. On the Parties as Representatives interpretation of the original position, the same foundational paternalism applies to us as well, since our representatives not only do not know who we are, but presumably are more rational than we are. There is no fundamental asymmetry between the Rawlsian account of adults and that of children: there is a sort of foundational paternalism with regards to each which is embodied in the idea that parties to the original position are rational (either because they are idealizations of us or because they are rational representatives of us). And so the extent that such a theory is paternalistic, the paternalism is a good thing, getting right one of the most important insights of contractarian thinking, namely, that there is an important connection between what rational agents would choose for themselves and the requirements of justice. Using the revised version of the original position, we can make sense of what this claim means for children. In conclusion, while Rawls leaves children out of his conclusions about justice, it seems that a consistent, alternative Rawlsian account can count them in. Here we have also said nothing about what would follow as requirements of justice were the contractors to reason the way we have suggested. Working out the details and implications of such an account is of course a much larger project, which we will not pursue here. Instead, we turn now to the part of Rawls’s theory where children are discussed, his account of stability..

**PART TWO:**  
**STABILITY, THE CHILD’S SENSE OF JUSTICE, AND THE PAROCHIALISM OF**  
***POLITICAL LIBERALISM***

Rawls's argument for justice as fairness has two parts. In the first part he argues that the two principles of justice (the principle of greatest equal liberty and the difference principle) are fair because they would be chosen by free and equal persons from a fair and equal starting point. The second part argues that the two principles are “stable,” that they are psychologically workable and appropriate for real persons outside of the Original Position. Part of this argument rests on a conception of childhood and the moral development of children. This part of the article will examine the theory of childhood moral development Rawls endorses in *A Theory of Justice* and ask three questions about it. First, what is the role of this material in *A Theory of Justice*? Second, is it neglected in *Political Liberalism*? Third, would it have been worth emphasizing more rather than less?

In the first part of his argument, Rawls uses the Original Position to show that the two principles would be chosen from a fair initial starting point by rational free and equal beings who are not motivated by envy. He claims, however, that this is not enough to show that the two principles are superior to competing conceptions of justice. In addition, we need to ask “whether the well-ordered society corresponding to the conception adopted [by the parties to the Original Position] will actually generate feelings of envy and patterns of psychological attitudes that will undermine the arrangements it counts to be just.”<sup>xxxiv</sup>

To understand the second part of Rawls’s argument,<sup>xxxv</sup> we must understand two crucial theoretical notions: stability, and a sense of justice. Roughly, a conception of justice is stable in Rawls’s sense only if people would have a disposition to adhere to it and to support the institutions that it endorses. To be stable, a conception of justice must be capable of gaining our allegiance, of providing us with motivation to support the institutions which it endorses. Rawls defines a *sense of justice* as “a normally effective desire to apply and to act upon the principles of justice.” If we can internalize and become willing to act upon a conception of justice, then we have acquired a “sense of justice” corresponding that conception.

Rawls wants to show that actual persons could acquire a conception of justice corresponding to the two principles of justice. That is, he wants to argue that they could accept the two principles of justice both as just constraints on their actions and as part of their own good. It is in the context of this part of the project that Rawls discusses the moral development of children. If children would in fact acquire this “sense of justice,” this desire to act on the two principles of justice, then the society founded on those principles would be stable.

Rawls endorses an approach to child moral development which is inspired by the cognitive-development theories of moral development advocated by Jean Piaget and Lawrence Kohlberg.<sup>xxxvi</sup> According to Rawls, children in a just society will normally go through three distinct stages in the development of their sense of justice.<sup>xxxvii</sup> He calls the first stage the “morality of authority.” In this stage, the child is utterly helpless and completely dependent on the parent. This dependency has at least two aspects. First, the child depends on the parent for her very existence, so that it is necessary to secure the good graces of the parent for survival.<sup>xxxviii</sup> The child also depends on the parent for guidance.<sup>xxxix</sup> For the parent is the sole source of information as to what is and is not advisable and prudent, about how

the world works and how to get along in it. At this point, the child has no basis to question the injunctions of the parent. This dependence is one fundamental fact about early childhood.

A second fundamental fact about (typical) childhood is that the child is loved by the parent. Rawls posits the psychological principle that a child who is loved will respond with love.<sup>xi</sup> This love is an important new factor into the life of the child, and it has three important effects. First, because the child recognizes that the person on whom she depends does in fact love her, she comes to trust the parent. This trust strengthens her tendency to respect and obey the commands of the parent, presumably because she comes to realize that the parent's commands are for the benefit of the child. Second, and perhaps more importantly, the child comes to desire to be like the parent. Part of being like the parent consists of using the parent's standards to judge herself.<sup>xii</sup> The familiar childhood propensity to try to "act grown up" involves (among other things) internalizing the standards of behavior of the adult whom she loves and on whose guidance and protection she relies. Third, when the child disobeys the parent's commands (which, as Rawls notes, is inevitable), she will feel guilt at having disappointed the parent, whom she loves. The content of the morality of the child at this stage is simply a collection of the commands of the parent, which will often seem arbitrary from the child's limited point of view, and which are obeyed in an effort to please and to be like the parent. For Rawls, the essence of this morality of authority is that "there is typically an authoritative person who is loved and trusted, or at least who is accepted as worthy of his position, and whose precepts it is one's duty to follow implicitly.... The prized virtues are obedience, humility and fidelity to authoritative persons; the leading vices are disobedience, self-will, and temerity."<sup>xiii</sup>

Readers of Piaget will recognize that Rawls's morality of authority is extremely close to Piaget's "morality of heteronomy." Piaget describes this first stage as consisting of "unilateral respect of the little child who receives a command without even the possibility of disagreement."<sup>xiii</sup> Yet this respect is also tinged with affection, so that the child feels that "a mutual sympathy surrounds relationships that are most heavily charged with authority."<sup>xiv</sup> Indeed, he claims that this "spontaneous mutual affection" between child and parent "no doubt is the starting point for that morality of the good" which is the product of cooperation at the second stage.<sup>xv</sup> Rawls also borrows Piaget's emphasis on imitation<sup>xvi</sup> and his observation that from the point of view of young children much of the totality of the parent's commands will seem arbitrary.<sup>xvii</sup> Rawls's first principle of moral psychology also looks very similar to a rule that Piaget endorses: "The feeling of obligation only appears when the child accepts a command emanating from someone he respects."<sup>xviii</sup> Finally, compare Rawls's summary of the virtues and vices of this stage with Piaget's: "Right is to obey the will of the adult. Wrong is to have a will of one's own."<sup>xix</sup>

Both Rawls and Piaget endorse the same basic picture of the child's nature. The child has certain dispositions, most notably, the disposition to love someone who loves her, and the disposition to imitate, obey, and judge oneself by the standards used by the one who is loved and respected. These dispositions are all postulated as more or less basic facts about young children rather than dispositions that must be "trained into" them through conditioning, reward, and punishment.<sup>1</sup> These basic dispositions are the stuff of later moral development. Morality (or, for Rawls, at least the sense of justice) is not a set of sui generis dispositions forced onto an otherwise amoral child, but rather it is something that is built out of these already

existing dispositions. The trick for such accounts of children's moral development is to show how a moral sense (or, in Rawls's case, a "sense of justice"<sup>li</sup>) can arise from these basic dispositions.

Both Rawls and Piaget accomplish this trick by appealing to the experience of being a part of a cooperative association with others. This occurs in what Rawls calls the "morality of association" and what Piaget calls the "morality of cooperation." Association, Rawls notes, pervades the life of a child. There are associations involved in activities such as games as well as those with fellow students once the child is in school. And as the child matures and passes out of the first stage, she comes to see the family itself as an association. These associations, and the cooperative activities in which they engage, spark the development of the child's sense of justice; the skills the child learns as she cooperates are the building blocks of the morality of association. To explain how this occurs, Rawls postulates a second psychological law: "as individuals enter the association . . . they acquire ...attachments when others of longer standing membership do their part and live up to the ideals of their station." In this way, "bonds of mutual trust and friendship develop among them. . . ."<sup>lii</sup>

Once these ties are established, the same dynamics that caused the child to obey the commands and internalize the standards of the parent are transferred to the group. Because the group's activities benefit its members, the members acquire a desire to "honor one's obligations and duties ...as a form of good will." This process is much the same as the one that produces in the child the desire to obey the commands of the parent. In addition, just as the parent becomes a role-model for the child, so too the child will find role models within the group, persons who do an exemplary job of filling the role assigned to them by the group.<sup>liii</sup> These role-models arouse the child's innate desire to imitate, causing the child to further internalize the standards of the group by imitating those who conform to them.

The imitation of role-models--both in the family and in other social groups--does more than simply account for the internalization of the group's standards. It also develops certain cognitive skills that are necessary for a sense of justice. Imitating a role-model requires the child to learn to view the world from the perspective of another person. Initially, the child's "ability to put himself in [others'] places is still untutored;" but this "lack is gradually overcome as we assume a succession of more demanding roles with their more demanding schemes of rights and duties [which] require us to view things from a greater multiplicity of perspectives."<sup>liiv</sup>

The ability to see things from the point of view of another, along with the attachment to the group, create a "morality of association in which the members of society view one another as equals, as friends and associates, joined together in a system of cooperation known to be for the advantage of all and governed by a common conception of justice."<sup>liv</sup> This morality consists of "the cooperative virtues: those of justice and fairness, fidelity and trust, integrity and impartiality" and denounces the vices of "graspingness and unfairness, dishonesty and deceit, prejudice and bias."<sup>lvi</sup> It is a direct and apparently inevitable result of cooperation within an association; it is "*bound to exist* once we become attached to those cooperating with us in a just (or fair) scheme."<sup>lvii</sup>

Again, the similarities with Piaget are worth noting. Piaget emphasizes that cooperation drives the development of genuine morality (which he calls the morality of autonomy): "adult authority...is not in

itself sufficient to create a sense of justice. This can develop only through the progress made by cooperation and mutual respect”<sup>lviii</sup> Indeed, the basic idea of what goes on in this stage is virtually the same in Rawls and Piaget. For both Rawls and Piaget, learning to cooperate develops the child’s ability and desire to participate in cooperative associations. Piaget develops and supports this idea through an extensive study of one of the primary cooperative activities of children: the playing of games. According to Piaget, children’s game playing produces a crucial effect. This is the transformation of the idea of a rule as an arbitrary command, to the idea of a rule as a “necessary condition for agreement.”<sup>lix</sup> Furthermore--and this is highly relevant for Rawls’s project--the development of the consciousness of rules as being necessary for agreement (and therefore cooperation) is correlated with respect for and compliance with those rules.<sup>lx</sup> Apparently, as children see that the rules of games make cooperation possible, and as they develop the desire to cooperate with others, they come to respect the rules that make cooperation possible. In other words, the conception of rules as governing “systems of cooperation” (as Rawls would say) seems to play a part in the child’s coming to have a desire to abide by those rules.

Rawls goes on to postulate a third and final stage in which the child comes to desire to comply with the principles of justice purely out of respect for them “as principles” rather than because of “ties of friendship and fellow feeling for others, and . . . concern for the approbation of the wider society.”<sup>lxi</sup> To explain this transfer of motives, Rawls postulates a third psychological law: “We develop a desire to apply and to act upon the principles of justice once we realize how social arrangements answering to them have promoted our good and that of those with whom we are affiliated.”<sup>lxii</sup> This third stage, then, involves the generalization of the sense of justice acquired in the second stage. It allows for the building of much larger cooperative arrangements than could be possible simply on the basis of fellow-feeling. Rawls writes: “While every citizen is a friend to some citizens, no citizen is a friend to all. But their common allegiance to justice provide a unified perspective form which they can adjudicate their differences.”<sup>lxiii</sup>

The basic picture which emerges from Rawls, which we can fill out by looking at the work of Piaget and Kohlberg (from which it is clearly drawn), is that cooperation brings about two main psychological developments: the ability to see things from the point of view of others, and the ability--and desire--to participate in fair systems of cooperation and to do one’s part as a member of such a system. This is exactly what Rawls needs if he is to demonstrate how the sense of justice--the ability and willingness to abide by principles that are fair--would arise in a just society. The ability to transcend one’s own perspective and adopt another perspective is necessary for the kind of reasoning for which the Original Position is a metaphor. And the ability and desire to participate in fair systems of cooperation are necessary for stability.

The cognitive-development picture of moral learning which Rawls endorses has been the subject of much controversy. Kohlberg in particular has come under attack both by psychologists and philosophers. Kohlberg’s most well-known critic is, of course, Carol Gilligan.<sup>lxiv</sup> She claims that Kohlberg’s work was male biased both experimentally (because he only used male subjects) and conceptually (because it is based on what she sees as a masculine conception of morality). Many philosophers and psychologists have also questioned his assumption that the later stages are “better,” or more adequate, or more accurately reflect

moral reality.

These attacks on Kohlberg's work--as important and powerful as they are--do not call into question the basic tenets of the cognitive-development approach to moral development theory that Rawls needs for his purposes. And thus the attacks need not force Rawls to abandon his approach to childhood moral psychology. The parts of cognitive development theory on which Rawls relies are simply not the controversial ones.<sup>lxv</sup> All Rawls *really* needs to claim is that there is a pattern of development that includes the morality of cooperation,<sup>lxvi</sup> and that this morality of cooperation is the foundation of the sense of justice.

Apparently, then Rawls can take the least controversial (and some would add, the best) ideas of Piaget and Kohlberg and put them to work in his theory. For Rawls's purposes, the most important part of Kohlberg's work is his empirical claim that the development of the willingness and ability to cooperate is a normal part of childhood. Rawls could draw rather little else from Kohlberg's theory. For Rawls's purposes, Piaget's most crucial idea is the conceptual analysis of what cooperation requires. This comes out most clearly in Piaget's conceptual analysis of the reasoning that must go on in games in order for there to even be a game. One of Piaget's most important insights about moral development is that the kinds of reasoning necessary for morality are present in games. The basic results of this conceptual analysis are twofold. First, in games one must learn to participate cooperatively with others even if they have different, perhaps even opposing, goals. Second, what counts as fairness in a game is what could be endorsed from an impartial perspective, rather than what is good from one's own perspective. In the end, Rawls really needs only the empirical observation that children play games, coupled with Piaget's insights as to what kinds of reasoning are necessary to play a game, in order to give his theory the kind of stability argument he needs.

These two crucial but fairly plausible claims from cognitive-development psychology are all Rawls needs to support his claim that cooperation naturally leads to a sense of justice which includes that ability to engage in the kind of impartial reasoning that is the cornerstone of the original position and the desire to act on the basis of that impartial (fair) reasoning. In short, these two basic claims imply that it is indeed possible for children to develop a disposition to engage in and abide by arrangements that embody fair systems of cooperation. This, in turn, provides good evidence that the conception of justice as the principles appropriate for governing a fair system of cooperation is indeed stable, that it could in fact generate support in the form of motives among the citizens to support the institutions it counts as fair.

Now that we've explored the role that childhood plays in *A Theory of Justice*, let's turn to *Political Liberalism*. The first thing to notice is that *Political Liberalism* contains no discussion whatsoever about childhood. This is surprising for two reasons. First, the main aim and *raison d'être* of *Political Liberalism* is to correct what Rawls came to see as flaws in the stability argument.<sup>lxvii</sup> Since the material on child moral development played a key role in that argument, it is surprising not to see much mention of it in *Political Liberalism*. Second, the theory of child development on which Rawls relies in *A Theory of Justice* became extremely controversial, it is rather surprising that Rawls did not feel compelled to comment on the controversy.

To see why the account of the moral development of children does not figure prominently in

*Political Liberalism*, we have to look carefully at the question of stability. It turns out that the issue of stability involves *two* questions. The first is whether and how we become motivated to support the institutions that justice as fairness endorses. Rawls's solution involves the story about how we acquire our "sense of justice" (that is, the motivation to support just institutions), and that story involves the moral psychology of childhood.

The second question is whether the motivation supplied by our sense of justice would be overpowered by competing motivation supplied by our conception of the good. The theory of the child's development of the sense of justice is intended to show that we would have *some* motivation to endorse just institutions. But we are also (often very strongly) motivated to pursue our conception of the good. What keeps this motivation from overpowering the motivation supplied by the sense of justice? This question has two answers, one in *A Theory of Justice* and one in *Political Liberalism*. The *Theory of Justice* answer is that justice is "congruent" with "our" good. The new answer, in *Political Liberalism*, is that the principles of justice are subject to an overlapping consensus of comprehensive doctrines.

*Political Liberalism*, in fact, was written largely to work out problems with the older version of the answer to this second question about stability. The new answer (and thus *Political Liberalism* itself) is driven by what Rawls calls "the fact of pluralism of reasonable comprehensive doctrines." Roughly, this is the fact that there are and always will be a variety of religious, philosophical, and moral doctrines in any modern pluralistic liberal democracy. This fact forces Rawls to develop a new solution to the second problem of stability, for he cannot appeal to the fact that we recognize that justice as fairness is "congruent" with "our" good, because we do not agree about what that good is: there is no single conception of the good that we all share. But the fact of reasonable pluralism has little obvious effect on the first question about stability, the one involving the development of the sense of justice.

In a passage concerning the "first question" about stability (the one to which the sense of justice and the moral development of children is relevant), he characterizes stability as a condition in which "citizens act willingly so as to give one another justice over time. Stability is secured by sufficient motivation of the appropriate kind acquired under just institutions." In a footnote to this passage, Rawls adds "How this happens I have discussed in *Theory*, esp. chap. VIII. I hope that account suffices, for our purposes here, to convey the main idea."<sup>lxviii</sup> Clearly, then, Rawls does not actually reject his theory of childhood moral development to answer this first question about stability; in fact, he re-endorses it. But while it is true that *Political Liberalism* is largely concerned with stability, and while it is true that the child development material is a key to the stability problem, the material plays no significant role in *Political Liberalism*. The reason for this apparent neglect is that there are two parts to the stability question, and *Political Liberalism* is concerned with the second. This then, is why there is only the slightest reference to child development in *Political Liberalism*: *Political Liberalism* is an attempt to work out a new answer to the *second* question about stability, and the material about child psychology is relevant only to the *first* question.

Or is it? Is Rawls's account of child development relevant *only* to the *first* question of stability? Could it also be deployed to help solve the *second* stability problem as well as the first?

To answer the second question about stability, Rawls appeals to the notion of an overlapping consensus of reasonable comprehensive doctrines.<sup>bix</sup> For a conception of justice to be subject to such an overlapping consensus is for each of those doctrines to affirm it for its own reasons and in its own way. Now it may seem at first glance that the way to figure out whether some political conception could be the focus of an overlapping consensus would be to look at all the reasonable comprehensive doctrines and see what they could affirm. But Rawls rejects this methodology. He claims that we must derive the necessary materials not from the particular reasonable comprehensive doctrines themselves, but rather from general facts that will apply to all those who hold *reasonable* doctrines in the societies toward which *Political Liberalism* is addressed: “We do not look at the comprehensive doctrines that in fact exist and then draw up a political conception that strikes some kind of balance of forces between them.... Rather, it [Political Liberalism] elaborates a political conception as a freestanding view working from the fundamental idea of society as a fair system of cooperation.... The *hope* is that this idea... can be the focus of a reasonable overlapping consensus.”<sup>bxx</sup>



In other words, Rawls assumes that each reasonable comprehensive doctrine will in fact affirm certain core ideas (most notably the idea of society as a system of fair cooperation between free and equal persons). He conceives his project in *Political Liberalism* as one of building up a political conception of justice out of those core ideas. If he succeeds, the conception of justice should be capable of winning an overlapping consensus, since it will be an articulation of values that each reasonable comprehensive doctrine endorses.

How does Rawls know what core values the reasonable comprehensive doctrines will endorse? The answer to this question reveals much about Rawlsian methodology and the parochialism of the theory of justice, especially as presented in *Political Liberalism*: “Justice as fairness starts *from within a certain political tradition* and takes as its fundamental idea that of society as a fair system of cooperation...”<sup>lxxi</sup> The fundamental ideas from which *Political Liberalism* is built are “implicit in the political culture of a democratic society.”<sup>lxxii</sup>

Rawls assumes (or, perhaps, hopes) that the history of a pluralistic society will be the source of these shared ideas on which an overlapping consensus is built: as people learn that they have little choice but to live together with people with whom they disagree, they will often over time come genuinely to espouse the virtues of toleration, free faith, reasonableness, and, in effect, the idea of society as a cooperative venture between free and equal people on fair terms.<sup>lxxiii</sup> It is this history of toleration in a pluralistic society that Rawls sees as the source of the shared ideas which *Political Liberalism* develops into a conception of justice that he hopes will be the focus of an overlapping consensus of reasonable comprehensive doctrines.

In effect, then, Rawls’s answer to the stability problem involves a kind of bootstrapping. He sets out to solve the stability problem, that is, to explain how a well-ordered democratic society can exist given reasonable pluralism. To do this, he appeals to the fund of shared public culture of a democratic pluralistic society. Apparently, he aims to solve the stability problem by reference to the shared understandings of a society that has already achieved some sort of stability!<sup>lxxiv</sup> This near circularity makes the theory parochial because it is appropriate for and directed towards a very particular kind of society--namely constitutional liberal democracies with shared traditions of toleration. Indeed, Rawls is quite candid in his admission of this parochialism. This admission will no doubt please some communitarian critics who have (probably incorrectly) seen *A Theory of Justice* as attempting to articulate universally valid political principles.<sup>lxxv</sup> But those who think of liberalism as a political system that is good for more than just liberals are likely to find this parochialism rather disappointing.

Rawls assumes, then, that the basic concepts on which his theory is based will be generally available only to members of a certain kind of society with a certain kind of history. But this seems rather pessimistic. For there is good reason to hope that the basic concepts necessary for Rawlsian liberalism might be derivable from *universal* features of society and human psychology, including the psychology of childhood moral development. If so, then political liberalism may not be nearly as parochial as Rawls seems to think. If there is something universal (or at least very widely applicable) in Piaget’s basic theory, then Rawls’s theory could be founded on concepts that psychology (virtually?) *guarantees* that we will all have (and find motivating), rather than on concepts that only members of certain societies will have.

Cooperation is surely a universal aspect of human life, and learning to cooperate is a universal part of childhood. If the earliest experiences of cooperation lead a child to develop a certain kind of moral outlook, and if that outlook is the fundamental idea of the theory of justice, then that theory may not be nearly as parochial as Rawls claims.

Whether or not cooperation is in fact universal, and whether or not it has the effects on the child's moral outlook that Piaget, Kohlberg, and Rawls claim are surely empirical questions. This is not the proper forum to settle such questions. But if the data turn out to be the way Piaget and Kohlberg hope, then cognitive-development theory may provide the sort of grounding necessary for a Rawlsian overlapping consensus *without having to assume the existence of shared liberal traditions the stability of which is precisely what we are trying to explain.*

There is good reason to think that cooperation requires--as a *conceptual* matter--certain abilities and attitudes on which a moral theory of justice might be grounded. Cooperation can only take place with the agreement of those involved. This seems just to be a conceptual fact about what it is to cooperate. If all normal children learn to cooperate, then the idea of agreement being necessary for a cooperative enterprise is a concept all normal children acquire. This is a key concept on which the Rawlsian theory is based. So it seems fairly promising to attempt to ground justice as fairness in features of child development that are common to all children. This is not the same as grounding the theory in universal principles appropriate to all rational beings. Nor is it the same as grounding the theory in value-neutral premises. But it is far less parochial than building the theory on the public culture of a specific sort of society with a specific kind of history. If Piaget's conceptual analysis of cooperation and Kohlberg's data are even approximately correct, then there is reason to be optimistic about the prospect of grounding political liberalism in facts about typical--if not universal--human psychological development.

There is another way to see how a theory of child moral development might be far more useful to the Rawlsian project than Rawls may realize. Rawls's account of stability depends on the reasonability of the people in the society, that is, on their willingness to cooperate even with those who hold comprehensive doctrines different from their own. Reasonable people will have reasonable comprehensive doctrines and those will endorse--each in its own way in an overlapping consensus--the political conception of justice. This conception of justice, claims Rawls, will embody a conception of society as a fair system of cooperation among free and equal persons who may or may not share one's comprehensive doctrine. Whether an overlapping consensus affirming this conception is possible depends on whether the people are reasonable.

Rawls addresses the relatively simple problem of getting "reasonable" people--people who realize that it is unreasonable to attempt to coerce others to accept their comprehensive doctrines--to endorse the principles of justice as fairness, which articulate the value of cooperation even among those who hold differing comprehensive views. But the *hard* problem is to get unreasonable "true believers" to subscribe to a tolerant system. Rawls sidesteps this problem by limiting his theory to societies dominated by persons holding reasonable comprehensive doctrines.<sup>lxxvi</sup>

But perhaps the theory of moral development can help. Suppose that children develop a

conception of cooperative fairness early on. If an ideal of reasonableness could be articulated to them as being a consequence of a basic kind of cooperative fairness which they already endorse, then they might tend to develop reasonable versions of their comprehensive doctrines. Indeed, Piaget's work on games provides us with a model for the reasonable response to cases in which fair and impartial judgments from the point of view of the original position clash with our own comprehensive doctrines. Piaget points out that in (competitive) games, what I want qua competitor has to be subordinated to what I want qua person who wants to play the game. This sort of situation is parallel to the second stability problem: what I want qua reasoner in the original position conflicts with what I want qua proponent of some comprehensive doctrine. This sort of lesson, one might hope, could be applied to the wider social context, making children more likely to realize that they can endorse a cooperative arrangement with people whose goals differ from their own, much as one does when one plays a game.

This possibility could have enormous theoretical and practical implications. It might help extend Rawls's work on stability from the easy problem of getting reasonable people to endorse justice as fairness to the hard problem of getting unreasonable people to do so. It also might help set an agenda for public civic education: if the conception of reasonableness as cooperating even with those who have differing beliefs and goals, and of society as a cooperative endeavour, can be articulated and reinforced in the school and in the community, then the influence of unreasonable comprehensive doctrines could perhaps be moderated.

If this is right, then Rawls may not have needed to qualify his theory of moral development to apply only to children in a just society. For even in unjust societies there will be cooperative arrangements. If the basic building blocks for liberalism are present in cooperation, then there is reason to hope that a liberal sense of justice could in fact arise in children even in unjust societies. Whether or not such hope is justified is an interesting and potentially vital question. In part, though, the answer depends on empirical facts which we do not yet know.<sup>lxxvii</sup> But, the importance of the answer is enough that we should press ahead both in moral psychology and in moral and political philosophy until we do know the answer. Until we do, it seems somewhat pessimistic to assume, as Rawls seems to, that a liberal sense of justice could only arise in liberal societies.

It is probably true that the particular institutions and rules Rawls argues for are best suited to societies with a certain history and certain traditions. But does that mean that the basic idea of the original position, that justice is founded on the fair conditions of cooperation, is culture-bound? If (virtually) all children learn to cooperate, then in what sense is a theory that builds on the universal features of cooperation culture-specific? Of course the outcome of the original position procedure, and perhaps some of the details of its formulation, might be culture specific, but why think that the basic idea of a pluralistic society as a fair system of cooperation must be? If the basic principles at the heart of liberalism appeal to values that we all learn as children, then there is good reason to hope that the idea of liberal society is not culturally specific, that it can appeal to those who are not already liberals. A popular book holds that everything one needs to know one learns in kindergarten. That is no doubt an overstatement, but perhaps the basic values to which liberalism appeals are in fact learned then. This of course, is not to

directly repudiate anything that Rawls says in *Political Liberalism*. It is to ask whether *Political Liberalism* would be a more powerful, less parochial theory if Rawls had not neglected childhood.

## Notes

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i. Although this is a joint project, Samantha Brennan is primarily responsible for Part One, and Robert Noggle is primarily responsible for Part Two. Brennan thanks Jim Ketchen and Elaine Brown for research assistance and The University of Western Ontario for financial support during the time this paper was written. She also thanks colleagues Michael Milde, Tracy Isaacs, and Bob Binkley for helpful comments on earlier drafts. Portions of Part Two were presented at the 1997 meeting of the APA at Berkeley, California, and the 1996 meeting of the Florida Philosophical Association. Noggle thanks Nancy Snow for her comments at the APA presentation, as well as members of both audiences for comments and suggestions.

ii. Although the moral status of children and the duties we owe to them are different issues than the issue of family justice, they are linked in more ways than the obvious connection that many families contain children. The more interesting connection is that the same feature of Rawls's argument in *A Theory of Justice* which makes it impossible for him to address family justice also makes it impossible for him to account for children. For a critical discussion of Rawls and family justice as it relates to *A Theory of Justice*, see chapter 5 of Susan Moller Okin's *Justice, Gender, and the Family* (New York: Basic, 1989). For a discussion of these themes in his later work, especially *Political Liberalism*, see Okin's "Political Liberalism, Justice, and Gender," *Ethics*, 105, October 1994, pp. 23-43.

iii. For an alternative contractarian account of justice, see Jan Narveson's *The Libertarian Idea*. The contrast is interesting because Narveson recognizes the importance of the challenge children pose for contractarianism. He devotes an entire chapter of *The Libertarian Idea* to the issue. In that chapter, "The Problem of Children" Narveson comes down on the side of denying that children have any moral status. One can disagree with Narveson's conclusions, while at the same time applauding his recognition of the question as important and pressing.

iv. *A Theory of Justice*, p. 128, 146. Although Rawls uses these terms interchangeably, one might think that there are important differences between them. The connotation of "head of family" is that an authority figure (usually male), where "family representative" has no gendered connotation and suggests a more democratic model of the family. For the purposes of this paper, the similarity between the terms matters more than the differences and so I adopt "heads of families" as Rawls uses it more often as do his commentators.

v. Writes Okin, "Thus the 'heads of families' assumption, far from being neutral or innocent, has the effect of banishing a large sphere of human life...from the scope of the theory." *Justice, Gender, and the Family*, p. 95.

vi. *A Theory of Justice*, p. 137.

vii. *A Theory of Justice*, p. 140.

viii. *A Theory of Justice*, p. 292.

ix. Jane English, "Justice Between Generations," *Philosophical Studies* 31 (1977) 91-104, p. 95

x. Christine Wright and Jean-Pierre Leroux, "Children as Victims of Violent Crime," Service Bulletin of the Canadian Centre for Justice Statistics, Volume 11, Number 8, May 1991.

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xi. One can raise the motivational worry more generally with Rawls's requirement that reasoning in the Original Position take place behind a veil of ignorance.

xii. For a defense of the claim that any duties we may have to future persons are not requirements of justice because they cannot be *correlative duties*, see Hillel Steiner, *An Essay on Rights*, pp. 259-261.

xiii. This error is reinforced by popular politics. A great deal of sloganeering in favour of various environmental measures goes on in the name of concern for children.

xiv. Jane English, "Justice between Generations," and D. Clayton Hubin, "Justice and Future Generations."

xv. This simplifies English's position somewhat. According to English, Rawls could justify a short-term savings principle from the original position since among those currently living are people from three or four generations. She also worries that a short-term savings principle is all that The-Heads-of-Families Assumption can justify since the natural ties of concern between generations do not extend beyond three or four generations.

xvi. Jane English, "Justice between Generations," p. 99.

xvii. John Rawls, *A Theory of Justice*, p. 138.

xviii. *Ibid*, p. 138.

xix. D. Clayton Hubin, "Justice and Future Generations," p. 76.

xx. John Rawls, *Political Liberalism*, p. 305

xxi. *Ibid*, p. 20, fn. 22 and p. 274, fn. 12. It is ironic that Rawls drops this assumption without ceremony given the amount that has been written by feminist political philosophers and others critical of the assumption and its implications.

xxii. Dropping The-Heads-of-Families assumption does not lead to Rawls addressing issue of justice in and for families. In "*Political Liberalism, Justice, and Gender*," Okin argues that although Rawls explicitly includes the family as one of the basic institutions of society and hence part of the proper subject matter of justice, he retains the idea that the family is more properly governed by affection than justice. This issue won't be pursued further here. What matters for our purposes is that without The-Heads-of-Households assumption he *could* address the question of justice and children, even if he, in fact, does not.

xxiii. For a discussion of this difficulty as it relates to Hobbes, see Peter King's paper in this volume.

xxiv. See Onora O'Neill, "Justice, Gender, and International Boundaries" in *The Quality of Life*, Martha Nussbaum and Amartya Sen, eds.

xxv. This is made especially clear in the articles written by Rawls after the publication of *A Theory of Justice* and in his more recent book *Political Liberalism*.

xxvi. *A Theory of Justice*, p. 139.

xxvii. *A Theory of Justice*, p. 139.

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xxviii. *A Theory of Justice*, p. 146.

xxix. Rawls himself writes in *Political Liberalism* that we should think of the terms of social co-operation as applying to members of society over “a complete life.” p. 20. And so while he nowhere considers children explicitly, childhood is clearly part of everyone’s complete life.

xxx. Further, on English’s account we must consider that we might be alive at any time in the history of our community.

xxxi. I owe this objection and the response to my colleague Bob Binkley.

xxxii. *A Theory of Justice*, p. 209.

xxxiii. For a useful discussion of the various levels in moral theory, see Shelly Kagan, “The Structure of Normative Ethics.”

xxxiv. *A Theory of Justice*, p. 531, see also *A Theory of Justice*, p 144; compare *Political Liberalism*, p. 140 ff., esp p. 140 n. 7. Where he makes the second part of this two-step procedure a bit more clear: “in the second part they ask whether a society well ordered by the principles selected in the first part would be stable: that is, generate in its members a sufficiently strong sense of justice to counteract tendencies to injustice.” The connection between envy and stability seems to be that if a person’s sense of justice provides her with motives to adhere to the institutions of a just society in spite of any envy that might arise, and if the conception of justice on which society is founded is congruent with her conception of the good, then envy should not arise, since she will see the society ordered as it is by the principles of justice as being in ones own interest.

xxxv. *A Theory of Justice*, p. 505, see also p. 312. Technically the decision about whether the conception is workable takes place in the original position, the idea being that workability is one of the things that the parties to the original position would want in a conception of justice.

xxxvi. Rawls also explicitly acknowledges an intellectual debt to Piaget and Kohlberg in 460 n. 5 of *A Theory of Justice*.

xxxvii. Rawls frames the stability problem as a problem about keeping a just society going, rather than getting an unjust society to be just, so he only needs the claim that development will occur this way at least in already just societies. However, it is certainly possible that this kind of development goes on in all societies, whether or not they are just. This point will be elaborated below.

xxxviii. See *A Theory of Justice*, p. 463 where he notes in passing that the child is initially motivated by rational self-interest.

xxxix. *A Theory of Justice*, p. 463

xl. *A Theory of Justice*, p. 463.

xli. See *A Theory of Justice*, p. 464-65.

xlii. *A Theory of Justice*, p. 466.

xliii. *The Moral Judgment of the Child*, p. 90.

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xliv. *The Moral Judgment of the Child*, p. 90.

xlv. *The Moral Judgment of the Child*, p. 195.

xlvi. See also *The Moral Judgment of the Child*, p. 49-50 for the importance of imitation in the early stages of rule-consciousness. There Piaget notes that children learning to play games first imitate those who know how to play. Kohlberg also shares this emphasis on imitation. In fact, he makes the notion of imitation of a respected and loved model central to his theory. See Kohlberg, "Stage and Sequence," pp. 105-165.

xlvii. See *The Moral Judgment of the Child*, p. 178. Piaget draws on this fact in his characterization of this stage as heteronomous.

xlviii. *The Moral Judgment of the Child*, p. 53; see also p. 195

xlix. See *The Moral Judgment of the Child*, p. 195. Piaget's conception of this stage has more to it. According to Piaget, this stage is marked by two other additional features. First, there is a sort of superstitious attachment to the rules as unalterable and sacred features of the universe. Second, there is a very strict view of responsibility that does not allow mitigation for anything, even intention. See *The Moral Judgment of the Child*, chap. 2. Rawls does not follow this part of Piaget, but nearly everything which he does say is traceable all or in part to Piaget.

i. The dispositions to love, to imitate, and to obey and internalize the standards of the loved one are basic in the sense that all normal children have them. They appear more or less automatically, rather than having to be deliberately "trained into" by parents or society. They may nor may not be basic in the theoretical sense of not being explainable by other factors. Indeed, Kohlberg postulates reinforcement mechanisms that, together with a basic motivation for competence, help explain the disposition to imitate. See "Stage and Sequence," p. 101ff. He is careful to claim, though, that the motivation is intrinsic. The story is roughly, that there is a basic motivation for competence, and since the child has no source of knowledge about whether she has done things competently, she ends up imitating adults (who, presumably in virtue of their superior power, are assumed to be competent). Thus imitation is explained by the fact that imitation and seeking reinforcement from adults are the best ways to satisfy the basic motivation for competence. Rawls also hints at a similar position on p. 495 of *A Theory of Justice*.

ii. The distinction will become crucial when we turn to *Political Liberalism*. Piaget and Kohlberg (at least initially) took themselves to be investigating the development of morality in toto (though Kohlberg has backed off a bit from this position in response to the work of Carol Gilligan--see "A Current Formulation," pp 224-36). But in *Political Liberalism*, at least, Rawls is only talking about a much more limited notion, namely, a *political conception of justice*.

iii. *A Theory of Justice*, p. 470, 471.

liii. *A Theory of Justice*, p. 471.

liv. *A Theory of Justice*, p. 469. Rawls does not say exactly how role-taking leads to the ability to view things from other people's perspectives. For Kohlberg's account, as well as a survey and critique of some alternatives, see Stage and Sequence, pp. 94-169.

lv. *A Theory of Justice*, p. 472.

lvi. *A Theory of Justice*, p. 472.

lvii. *A Theory of Justice*, p. 472, emphasis added. It is worth noting that Rawls limits this claim to just or fair

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cooperative arrangements. This raises a number of important and interesting questions. First, what counts as a just (non-state) cooperative arrangement? Susan Moller Okin has criticized Rawls for not adequately addressing this question in *Justice, Gender, and the Family*, pp. 97-101. Second, could the sense of justice arise in an unjust cooperative arrangement? Rawls does not claim that it could. Okin seems to assume that it cannot. It is not clear that this is the correct assumption to make, however. For on the theory that Rawls presents, and certainly in Piaget and Kohlberg, it is not so much that the family qua family is the school of justice, but rather that the family qua cooperative arrangement is the school of justice. Children, on this view, do not learn justice by observing just institutions, but by cooperating. If this is correct, then it is at least possible that children could learn the necessary foundations for a sense of justice even from an unjust family, so long as it still qualified as a cooperative arrangement. Even an unjust family--so long as it is a cooperative association--could play the role Rawls needs it to play in the transformation from the morality of authority to the morality of cooperation. Saying this, however, does not get Rawls off the hook for failing to take account of gender-issues within the family. But it does raise the possibility that the sense of justice may be much easier to acquire--and thus a just society much more stable--than Rawls realizes.

lviii. *The Moral Judgment of the Child*, pp. 319-20; see also p. 348 and numerous other places as well.

lix. *The Moral Judgment of the Child*, p. 71.

lx. *The Moral Judgment of the Child*, p. 71.

lxi. *A Theory of Justice*, p. 473.

lxii. *A Theory of Justice*, p. 473-74.

lxiii. *A Theory of Justice*, p. 474. Piaget does not exactly postulate this stage, but he seems to assume that its processes occur at some point. Though he only talks about the development of the morality of cooperations in reference to particular schemes of cooperations (e.g. the game of marbles), he assumes that this is the source of the adult's sense of fairness in general. Thus he assumes some sort of process of the sort that Rawls envisages here that transforms the sense of fairness-in-a-particular-cooperative-scheme (e.g., the game of marbles) to a sense of fairness in general. This sense of fairness in general is not tied to particular affections for the members of the group, but can stand alone to govern one's interactions with a group of people not all of whom one has ties of affection toward. Thus what Rawls splits into stages two and three may better be thought of as corresponding to Piaget's second stage. For both of them, this endpoint of moral development involves respect as a motive for the sense of justice. For respect for persons as such can be a motive to behave justly toward persons even if one has no particular affection toward them. In this respect, much of Piaget's work ties in quite nicely with the Kantian remarks Rawls makes in *A Theory of Justice* pp. 476-78. A possible disagreement between Rawls and Piaget may lie in the role of affection in moral development. Piaget does not postulate a stage in which affection drives cooperation. Though Rawls is not as clear as we might want, he does seem to imply in the description of the third stage that the morality of cooperation in the second stage is driven by affection (see *A Theory of Justice*, p. 473-74). Piaget, on the other hand, constantly emphasizes the importance of respect as a motive for cooperation (see e.g., *The Moral Judgment of the Child*, pp. 94-108).

lxiv. Most notably in *In a Different Voice: Psychological Theory and Women's Development*.

lxv. Indeed, one might be tempted to think that it is this very controversy that led Rawls to virtually ignore his own theory of moral development in *Political Liberalism*. But as will be shown below, Rawls does not in fact abandon this theory at all.

lxvi. It is also worth noting in this connection that Piaget (unlike Kohlberg) did make an explicitly effort to study girls to make sure his theory was not gender biased. Though he found some differences in detail, the basic move from



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the heteronomous “morality of authority” to the morality of cooperation was essentially the same. This is not surprising, since in effect, what Piaget does is simply to provide a sort of conceptual analysis of cooperative endeavor and show how it can be the basis for certain moral attitudes (namely fairness). Since it is the fact of cooperation rather than the actual content of the game, these results should hold for all sorts of cooperative endeavors. Thus if it turns out that little girls play different sorts of games than do little boys, this should not matter, since the important fact is that games of whatever sort are cooperative endeavors.

lxvii. See in particular, *Political Liberalism* xv-xx.

lxviii. *Political Liberalism*, p. 143, fn 9.

lxix. A “comprehensive doctrine” is a complete or relatively complete moral, philosophical, and religious view which includes, among other things, one’s conception of the good. See *Political Liberalism*, p. 13.

lxx. *Political Liberalism*, pp. 39-40, emphasis added. On the hopeful but uncertain nature of the Rawlsian enterprise, see *Political Liberalism*, pp. 150-8 and 14-15.

lxxi. *Political Liberalism*, p. 14.

lxxii. *Political Liberalism*, pp. 13-14. Rawls elaborates as follows: “This public culture comprises the political institutions of a constitutional regime and the public traditions of their interpretation, as well as historic texts and documents that are common knowledge.... In a democratic society there is a tradition of democratic thought, the content of which is at least familiar and intelligible to the educated common sense of citizens generally. Society’s main institutions, and their accepted forms of interpretation, are seen as a fund of implicitly shared ideas and principles.”

lxxiii. See *Political Liberalism*, pp. xxv and 158-68.

lxxiv. This is perhaps a bit too harsh: Rawls does present a what he admits is a rather rough sketch about how an overlapping consensus might come into being (*Political Liberalism*, pp. 158-168). And it may well be that an explanation of the forces of a stable system can be informative even if they do not explain how a system became stable (I take it this is true, for instance, in physics). Thus while the theory seems circular, it does not seem viciously circular. Rawls’s story about how the overlapping consensus appears essentially involves two components. First, religious wars and what not lead to constitutional consensus as a modus vivendi. Second, this modus vivendi leads to overlapping consensus via a moral psychological principle that says that those who benefit from a set up will do their part if others do theirs and if they see the set up as just (see p. 163). This picture is based on two assumptions, both of which are quite problematic. The first is that the overlapping consensus will occur only in societies in which there is a history of modus vivendi. The second is that there is a psychological principle that essentially guarantees that people living in a modus vivendi that they see as just will come to affirm its principles in their comprehensive doctrine thus enabling an overlapping consensus to occur. The problem with the first assumption is that it makes *Political Liberalism* very parochial. The problem with the second is that it essentially answers our question simply by asserting a psychological law that answers our question. That is not much of an answer.

lxxv. Indeed, this sort of bootstrapping methodology is implicit in *A Theory of Justice* as well, for the method of reflective equilibrium has to have some initial intuitions to equilibrate with the theory. Apparently, then, *Political Liberalism* is in part a declaration of the source of those initial intuitions: they come from our shared public culture as a constitutional democracy and from the fact that we--or at least most of us--have comprehensive doctrines which are "reasonable," that is, which we affirm while at the same time recognizing that a reasonable person may hold some other comprehensive doctrine.

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lxxvi. Rawls does say a bit in *Political Liberalism* about how over time a modus vivendi will lead to more toleration on the part even of the intolerant.

lxxvii. One of the most important of these is how some children manage to learn the “right” lesson from cooperation--that is, the lesson that the sorts of reasoning and willingness to cooperate can be generalized from the limited context of a particular cooperative association to society as a whole.