
FAMILY JUSTICE AND SOCIAL JUSTICE

BY

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It is interesting that many philosophers who praised Rawls's theory of justice as it was presented in *A Theory of Justice (TJ)* as an important advance in the liberal tradition of political thought, have announced their disappointment with his recent developments of that theory in his new book *Political Liberalism (PL)*. In this paper I will examine one type of feminist criticism of the view presented in *PL*, and consider possible Rawlsian responses to it.

The criticism I want to examine urges that for society to be just, families must be just, but that features of Rawls's theory in *PL* prevent it from ensuring that families are in fact sufficiently just for society to be just. Susan Moller Okin writes, for example, that in *TJ*,

families and associations were assumed and recognized to be just. In the new account, the political/nonpolitical dichotomy seems to preclude this ... [But] if, in the just society, families and churches are not required to be just but can be organized hierarchically (with this ordering justified by "nature", say, or divine law), how is it possible for those who spend a far greater (as well as more intense) part of their lives in these institutions than in any "political" activity to think of themselves as free and equal citizens, as Rawls requires them to in the political realm?¹

The suggestion here is that it is particularly the distinction between the political and the nonpolitical in Rawls's new account that is causing the trouble, but in fact the general structure of Rawls's theory is enough to set off warning bells. I shall thus begin with a very brief sketch of the new theory's general shape.

I.

The new book is framed as an explicit discussion of the following issue: "How is it possible that there may exist over time a stable and just society of free and equal citizens profoundly divided by reasonable religious, philosophical, and moral doctrines?"(xxv). Assuming, as Rawls does, that reasonable disagreement is an inescapable result of the exercise of reason under free institutions, we cannot expect that all citizens will affirm the same comprehensive doctrine. So we need to discover "What are the fair terms of social cooperation between citizens characterized as free and equal yet divided by profound doctrinal conflict?"(xxv). How, in other words, should we allot public resources, resolve disputes, limit legislative restrictions on and assign constitutional protections to the forms of life represented by say, Jerry Falwell, Cardinal Mahoney, David Duke, Louis Farrakhan, Catherine MacKinnon, Robert Mapplethorpe and Snoop Doggy Dogg? The fact of reasonable pluralism necessitates principles of justice to regulate the pursuit by different groups of their own reasonable comprehensive doctrines, and requires, Rawls argues, that those principles be articulated as part of a free-standing political conception, detached from any particular comprehensive doctrine.

Those are the sort of principles Rawls takes himself to be proposing. His idea is that if we select principles from a position in which all are represented as free and equal, none has a bargaining advantage, none knows to which particular form of life he or she is committed, and each is concerned to protect her capacity to form, revise, and pursue a conception of the good, it will be impossible to tailor the principles selected in order to promote some reasonable forms of life over and against others.

Now on this description of Rawls's project, we can see at once why a feminist might be alarmed. Any comprehensive feminist view of the proper relation between men and women and the proper conception of how family life should be ordered is reduced to one among many possible reasonable comprehensive doctrines, and enjoys no special privilege when principles of justice are selected. There is feminist view *x*, and then there is the Adam's rib, man's helpmate view, and if Rawls's principles allow different groups to pursue their differing forms of life, sexist and patriarchal practices and family forms may find themselves protected, even though from within feminist assumptions these practices are just plain wrong, and their underlying belief system demonstrably incorrect. Not only will the feminist find this disturbing in itself, but if it can be made out that injustice in families undermines the stability of the just society, it will also pose a problem for Rawls that the logic of his own position requires him to take seriously. But before we take up the latter

question, let us consider whether Rawls's theory really does require the protection of sexist comprehensive doctrines.

II.

One might suppose that Rawls need not protect sexist or racist or otherwise discriminatory comprehensive doctrines because discriminatory doctrines are *unreasonable*. This is essentially what Okin asserts:

[S]urely women within [fundamentalist or orthodox] religions present a not much less extreme case [than slavery], which raises the question whether such forms of indoctrination should be allowed in a well-ordered society. Indeed, we must ask whether such views, while not uncommon in contemporary liberal societies, can be regarded as "*reasonable*" by Rawls's definition of the term, which is very close to "fair" ... Surely the circumscription of women's roles in life, their segregation in religious life, and their exclusion from important religious functions and positions of leadership—doctrines and practices that are still common to many varieties of religion—render them *unreasonable* by Rawls's own criteria.²

It is certainly true that Rawls's theory regards the refusal to accommodate *unreasonable* comprehensive doctrines as entirely proper. Rawls acknowledges that "Of course, a society may also contain unreasonable and irrational, and even mad, comprehensive doctrines. In their case the problem is to contain them so that they do not undermine the unity and justice of society" (xvi-xvii). Only reasonable comprehensive doctrines are to be tolerated.

What then makes a view unreasonable? Any view that wishes to use state power, which is understood to be the corporate power of free and equal citizens, to deprive some citizens of their equal basic rights and liberties is as such unreasonable, and not to be permitted to succeed in its ends. But racist, sexist, and other sorts of discriminatory comprehensive doctrines that do not urge such uses of state power are not automatically to be counted unreasonable. "Unreasonable" is not, in Rawls's parlance, a simple synonym for "unfair" or "discriminatory;" it is both a weaker and a more precise notion that makes use of Rawls's idea of the "burdens of judgment" (*PL*, 54-66).

The burdens of judgment offer an account of how reasonable people, that is, people who are willing to propose and abide by fair terms of cooperation with other free and equal persons, can nonetheless disagree in their comprehensive doctrines and secondary political conclusions. The burdens of judgment account for the possibility of reasonable disagreement in terms of differences in how the values relevant to settling a question are weighted, the complexity of the empirical evidence, the vagueness and underdeterminacy of our concepts, and so on. We need

not assume that those who disagree with us are stupid, perverse, or corrupt in order to account for the disagreement—reasonable disagreement is possible. Now according to Rawls, a *citizen* among equal citizens is unreasonable if he or she fails to recognize the burdens of judgment and their implications, the most important implication being that because reasonable disagreement is possible and usual among the citizens of a free society, state power should not be used to enforce the constituent views of one comprehensive doctrine on those who hold some other reasonable comprehensive doctrine (60–61).

A *comprehensive doctrine* is to be counted reasonable if it can be affirmed in a reasonable way, does not reject the essentials of a constitutional regime (xvi), and constitutes a coherent exercise of theoretical and practical reason, in some cases as part of a standing tradition of thought and doctrine (59).

We can see then that Rawls is operating with much more restricted notions of reasonable person and reasonable comprehensive doctrine than Okin seems to imagine. By Rawls's criteria, so long as a sexist comprehensive doctrine does not reject the essentials of a constitutional regime, i.e., does not seek to use the state's coercive power to deprive women of their equal political and civil rights and liberties, it is not to be dismissed as unreasonable, no matter how offensive others may find it, and no matter how unfair (by the standards of justice internal to others' comprehensive doctrines) it may be. So Okin's move to prohibit *unreasonable* comprehensive doctrines that advocate, say, sexist divisions of family labor, but do not seek to legally enforce such divisions, is not a move that Rawls need accept.³

III.

Let us turn then to the suggestion that for society to be just, families must be just. To determine Rawls's response to this stance, we need to ask, *according to what standard of justice* are families said to need to be just if the broader society is to be just? Just *how*? We can distinguish three distinct standards of family justice: just according to a feminist comprehensive doctrine, just in the sense of being internally ordered by Rawls's two principles of justice, or just in virtue of their conformity to the constraints imposed by the requirements of a just Basic Structure.

Rawls's view rules out the first of these standards as improper. In a society characterized by reasonable pluralism, the standards of justice internal to one reasonable comprehensive doctrine cannot fairly be imposed on others who affirm a contrary reasonable comprehensive doctrine. To return to our earlier observation that one who affirms a comprehensive feminist doctrine will reject the Adam's rib view of

women's role as not only pernicious but false, what impresses Rawls about this case is that from the point of view of some orthodox or fundamentalist religious views, say, the symmetric criticism, its very mirror image, can be made, that given scriptural knowledge, the feminist's view is just plain wrong, and her belief system is corrupt. Each of these views is, from the point of view of the other "just another sectarian doctrine." And because the dispute between them cannot be resolved by public reason, using common methods of inquiry and argument (such as uncontroversial science and commonsense), the state should also regard them as sectarian doctrines without special claim to be promoted by the state as "the truth." This is not to deny that one of these views *is* true, but since the claim that it is true "cannot be made good by anyone to citizens generally," neither side may legitimately enlist state power (61). Rawls writes:

in recognizing others' comprehensive views as reasonable, citizens also recognize that, in the absence of a public basis of establishing the truth of their beliefs, to insist on their comprehensive view must be seen by others as their insisting on their own beliefs. If we do so insist, others in self-defense can oppose us as using upon them unreasonable force. (247)

This means that neither side may use the long arm of the law to impose the conception of familial justice internal to its own comprehensive doctrine on the other. These doctrines are to be held, not to *each other's* doctrinal standards of family justice, but to the standards of a *public political conception of justice*.

So Rawls's view will not side with the feminist in directly imposing his or her comprehensive doctrine by legally requiring, for example, that divisions of labor within the family be equitable. Part of the reason for this is that so long as they are not unreasonable, gender-hierarchical religious views with their accompanying forms of life, voluntarily entered into, must be allowed if parties in the Original Position, who well know that they may turn out (once the veil of ignorance is lifted) to affirm such views, wish to protect their freedom to practise their religion. And Rawls believes they should want this, because it is necessary to protecting their exercise of their moral power to form, revise and pursue a conception of the good. *If* marriage is from the point of view of the state (with its coercive power) a non-mandatory association, and so long as it is exitable, as is membership in the religion itself, and so long as women's equal rights in the broader society are guaranteed, and so long as children, the human issue of such marriages, are protected from neglect and abuse, and educated to their rights as citizens, then, thinks Rawls, our recognition of the fact of reasonable pluralism requires us to allow patriarchal marriages, no matter how defective some of us may think them.

Let us consider then the second standard by which families might be said to need to be just if the society is to be just, namely, they must be

internally ordered by Rawls's public political conception of justice. This standard is evidently the one Okin thinks Rawls is committed to using by placing the family within the basic structure (Speaking of the political values that Rawls takes his principles of justice for the basic structure to express, including fair equality of opportunity and economic reciprocity, Okin writes: "Since the family is part of the basic structure, all these values should surely apply *within* them".⁵) But Okin is mistaken about this. The fact that an institution belongs to the basic structure does not imply that it is to be *internally ordered* by Rawls's two principles. The principles of justice regulate the basic structure, which is the *system of interaction* among a society's major political, economic and social institutions; the principles of justice govern this interaction; they govern "*how* [a society's main political, social, and economic institutions] *fit together* into one unified *system* of social cooperation from one generation to the next" (p. 11). They do not govern each institution individually, by ordering its internal life. The Supreme Court is an institution of the basic structure, but it is not to decide individual cases affecting the wealth of the litigants according to the difference principle; similarly, the two principles limit the *range* of market operation within the basic structure by, e.g. prohibiting the sale of citizens' liberties, but they do not internally order markets, taking the place of the law of supply and demand. A just basic structure does indeed impose *constraints* on institutions and associations, but the principles of justice do not directly order their internal life.

Rawls offers the example that while churches are constrained by the principles of justice, which guarantee citizens the liberty to leave their faith, and do not recognize heresy and apostasy as legal crimes, the principles of justice do not require church governance to be democratic, or require churches to organize their offices so as to satisfy the difference principle.

The same holds for families: although the family as an institution is subject to the constraints which the principles impose on all associations, families are not to be internally ordered by those principles. We need not, say, distribute goods to our children in accordance with the difference principle, nor, Rawls thinks, would this be desirable. Families are constrained by the principles of justice in the obvious ways—their members may not be deprived of their political and civil liberties, sold into slavery, assaulted, battered, and so on. And the constraints of a just basic structure do rule out some family practices. Rawls gives as an example primogeniture, the systematic favoring of the first born child. A policy of primogeniture would be "undone" by the basic structure's property laws governing inheritance and bequest needed to ensure fair equality of opportunity and to satisfy the difference principle.

It is important to see that the *nature* of the family—the forms families take, e.g. monogamous, polygamous, heterosexual, homosexual, nuclear,

extended or communal *a la* kibbutz, etc.—makes no difference in Rawls's view, provided that families can effectively rear future citizens, and respect the equal rights of citizens. If so-called alternative family forms can raise children to the necessary standards of civic virtue, without “running afoul” of other political values, then Rawls's conception of justice has no objection to them.

If there are family forms that undermine the family's role in upholding a constitutional regime, these may be prohibited, just as family practices that violate the constraints on associations imposed by a just basic structure may be prohibited; otherwise, family forms and practices may be as their members desire, according to their own comprehensive doctrines. Rawls's commitment to allowing any family form compatible with the effective development of future citizens is what accounts for the peculiar language Rawls uses in talking about the family as part of the basic structure. He writes:

The basic structure is understood as the way in which the major social institutions fit together into one system... Thus the political constitution, the legally recognized forms of property, and the organization of the economy, and *the nature of the family* all belong to the basic structure. (p. 258)

Not the family, but the *nature* of the family, that is, the selection of its acceptable forms, given its social role. So while the nature of the family is part of the overall social structure which the principles of justice order, families are not to be internally ordered by the two principles.

This observation allows us to sort out a further apparent confusion in Okin's understanding of Rawls's theory. Okin writes that

On families, Rawls is much less clear than in *A Theory of Justice*. Now they are both specified as part of the basic structure (p. 258) and said to be nonpolitical (pp. 10, 137, 195). But this, given Rawls's definition of the political, involves a contradiction in terms.⁶

I conjecture that Okin thinks this stance a contradiction because she believes that the institutions belonging to the basic structure are to be directly ordered by the principles of justice, while nonpolitical associations are not. But while the nature of the family belongs to the basic structure, the domain of the familial is non-political, and this is not a contradiction in terms. Families are identified as non-political precisely by virtue of the fact that the principles of justice apply to them only indirectly—there is no way to distinguish the political domain from the nonpolitical domain of the associational, the familial, and the personal, apart from seeing how the principles of justice apply to it, whether directly, or indirectly.

One especially interesting feature of Rawls's view here is that the distinctive social role of the family also imposes *reciprocal* limits on the

other arrangements of the basic structure. According to Rawls, we are to think of society as a system of fair social cooperation over time from one generation to the next, indefinitely (pp. 3, 14). The family serves as the primary means for the orderly reproduction of society over time, by serving as locus for the rearing and educating of future citizens in sufficient numbers that society can be maintained. We can imagine alternative institutions to that of the family for raising children and ensuring their moral development into free and equal citizens with the necessary political virtues. But we presently and for the most part use the family for this purpose, and Rawls does assume that the family in some form is just. What this means, I take it, is that the principles of justice do not require us to abolish families and rather, say, rear children collectively in state-run institutions. One might think that the principle of fair equality of opportunity *would* in fact require this, since differences in upbringing do differentially affect opportunities; but Rawls assumes that the family in some form, appropriately supported and regulated, is compatible with his principles of justice. That means that the needs of the family as the mechanism of the just society's reproduction over time impose constraints on the ways that fair equality of opportunity can be pursued, and may even require a weaker form of the opportunity principle than Rawls has so far defended. (This further specifies the sense in which the nature of the family belongs to the basic structure.)

This is quite interesting, because if we ask *why* should the institution of the family have this special status—why permit the family, but only the family, to reciprocally constrain the principles of justice—it is not at all obvious what answer Rawls can give.⁷ It would be natural to say that the family is given this unique standing because many people care so intensely about raising their own children themselves, but this answer is not available to Rawls, who cannot count the greater intensity of a desire as a legitimate reason to compromise justice. Rawls himself insists that “citizens are to recognize... that the weight of their claims is not given by the strength and psychological intensity of their wants and desires (as opposed to their needs as citizens), even when their wants and desires are rational from their point of view” (p. 34) and that “the fact that we have a compelling desire ... does not argue for the propriety of its satisfaction any more than the strength of a conviction argues for its truth” (p. 190). Besides, were Rawls to admit this sort of consideration about the centrality of an institution to people's fulfillment as a reason for compromising justice, others who find primary meaning in their religion, say, would be on equally firm ground in demanding that the principles of justice should also give way to the needs of their religion, a possibility Rawls explicitly rejects. A second possible account of the special status of the family, available to us but again not to Rawls, would be that a vast majority of citizens favors assigning the family this status. For Rawls,

majority support can legitimate policies or practices only if these are deemed permissible by the prior and independent principles of justice.

There is however a third possibility, which is available to Rawls. If it is plausible to suppose that the moral development of children necessary to their becoming fully cooperating citizens requires an intense personal adult-to-child relationship of love and trust, and if it is plausible to suppose further that state-run child-rearing institutions would be significantly less likely to provide the needed intimate relationship, then the reliable reproduction of a just society over time will require that children be raised in families. This sort of necessary precondition for the reproduction of a just society *would* serve to justify reciprocal constraints on the principles of justice. The reason is that Rawls's project, which is to identify principles of justice appropriate to a system of social cooperation among free and equal citizens from one generation to the next indefinitely, could hardly be said to have identified appropriate principles for such a system if its principles prohibited an institutional form necessary to the system's continued existence. So an argument of this form could do the work Rawls needs done; and I suspect that something like this is actually what Rawls intends, because his account of children's development of a sense of justice in section 70 of *TJ* actually posits the necessity of an intense personal relationship between an adult and a child in which the child's perception of the adult's evident love for her and desire for her good for its own sake sets in motion the child's moral development. What is missing in Rawls's account as it stands is an argument to the effect that families more reliably provide the needed relationship than state institutions could be expected to do. But perhaps we could construct such an argument in a way that would not be entirely implausible.

So, to return to our main line of argument, we have seen Rawls's reasons for rejecting the first two senses in which it might be said that families must be just. This brings us to the third, that they must be just as in *subject to the constraints a just basic structure imposes*. This Rawls agrees with, indeed insists on. Families are composed of equal citizens and future equal citizens, and the principles of justice guarantee the basic rights and liberties and fair opportunities of each of them. We could say that this requires that families be just, but it would be truer to Rawls's meaning (and also to his style) to say that permissible family forms must not be *unjust* according to the standard of the two principles. So in this sense of family justice, Rawls will agree with the feminist that families must be just.

Even in this third sense, justice requires quite a lot. It arguably implies protected exit from marriage or the choice not to marry (with guarantees, in cases of divorce, of the equitable division of marital assets and equitable parental support for children), equal access to equally good jobs, which

would require public or publicly subsidized provision of adequate child care, flex time and family leave; Rawls can and should accept Okin's suggestion⁸ that employers be required to split paychecks between employees and their homeworking spouses. Justice in this sense further prohibits neglect and abuse of children, and requires their education in the rights and duties of citizenship and, importantly, requires that their education should enable them to be "economically independent and self-supporting members of society over a complete life" (*PL*, pp. 199, 200).

This mandatory content to the education of every child is very important, because it makes it clear to citizens that the associations in which they were raised neither define nor exhaust the political rights they enjoy as citizens. So while clubs, churches, and families may within broad limits operate according to their own rules and values, they do so with members whom the broader society has educated to their rights as citizens. This clearly disempowers associations; but it preserves the capacities of individuals to form, revise, and pursue their own plans of life.

IV.

But does it sufficiently disempower associations, from a feminist point of view? It is true that all of these measures taken together will still allow families to adopt unequal divisions of labor, and affirm sexist beliefs about natural hierarchy. Why might the feminist still maintain that this indirect regulation of families by the principles of justice does not ensure that families are just enough for society to be just? One plausible answer is that such regulation still permits families that impose serious psychological barriers to genuine equality and to the stable reproduction of Rawls's well ordered society.

One real problem of this sort is that the principles of justice do less to order the internal life of families than might be thought necessary for the girls raised in them to be *psychologically capable* of making use of their (potentially) equal political and material resources. Although Rawls's theory addressed the problem that material inequality upsets political equality and renders it merely formal, his theory does not address the worry that his principles would allow children to be so raised that they are psychologically and motivationally incapable of taking advantage of their equal material opportunities and so of realizing their basic liberties as citizens.

This, I think, is the real heart of Okin's concern in the passage I quoted at the beginning, and it can be put in a form analagous to that of the famous Marxian criticism of liberal theories that the material inequalities they allow render their equal liberties merely formal. The analogous criticism is that some forms of child-rearing, flagrantly sexist ones for

instance, create such psychological barriers to equality that those girls raised in them cannot use their material and formal freedoms to any advantage. A second and related problem is that households which manifest injustice, through, say, an inequitable division of labor, will render the children raised in them psychologically incapable of regarding one another as equals.

Now, can Rawls just dismiss these criticisms on the grounds that people's internal psychological states, though the stock and trade of utilitarians, are not his concern? Rawls, after all, famously proposes a mechanism for comparisons of wellbeing—an index of primary goods—that is purposely non-subjective and non-psychological, and excludes the so-called “special psychologies”—envy, a daredevil attitude toward risk-taking, and so on—from political reasoning. And he insists, most clearly in *PL*, that features of people's psychological makeup such as their tastes and preferences are to be treated as their own responsibility, and not to be catered to in either determining or applying the principles of justice. So one imagines that Rawls's first inclination would be to insist that a political theory need not (and should not) be concerned with the inner workings of people's psyches.

Nevertheless, Rawls cannot get off the hook that easily; there is a natural way of reformulating the feminist worry in terms that Rawls's own theory requires him to take seriously. One way of putting the worry is that severely sexist families will make it impossible for the children raised in them to develop the two moral powers normally necessary for full citizenship.

The two moral powers, recall, are the capacity to have and act from a sense of justice, and the capacity to form, revise and pursue a conception of the good. Rawls is committed to the view that conditions which make impossible the development of these are to be prohibited, and conditions necessary for their development, such as mandatory education in the rights of citizenship, must be enforced, even if they abridge other essential freedoms such as freedom of conscience or the exercise of religion. The development of an effective sense of justice is necessary if a well-ordered society is to reproduce itself over time. It is this moral power that makes cooperation on fair terms possible, and it is the other moral power that specifies the sense in which citizens are to be thought of as free—free because politically regarded as self-authenticating sources of valid claims, and so, for political purposes, as independent of their affirmation of any particular comprehensive doctrine (pp. 30, 32). The feminist worry is that boys and girls raised in sexist homes will not develop an effective sense of justice, and the girls in those homes especially will be prevented from forming or revising their conception of the good across anything like the meaningful range of conceptions available to boys. This worry, put in this way, is one that Rawls must face, because forms of child-rearing that

stunt the development of the two moral powers of future citizens effectively annihilate citizens, a citizen being, by Rawls's abstract definition, nothing more than one who possesses the two moral powers to the minimum degree needed to engage in fair social cooperation over a complete life (pp. 18–19).

To consider this criticism we need first to better specify its content. The criticism cannot plausibly be urging that only optimistic family forms—forms that develop to the highest possible degree the two moral powers—can be tolerated by Rawls's theory. This would almost certainly involve far more state interference in the internal life of families than would be consistent with any recognition of the basic liberties of their members, and would probably be inconsistent with the adoption of the family form as the mechanism of child-rearing. Moreover, Rawls explicitly stipulates that citizens are to be regarded as possessing the two moral powers to “the requisite *minimum* degree to be fully cooperating members of society” (p. 19, emphasis added), and that differences above the minimum are irrelevant from the point of view of the theory of justice and do not affect the rights of citizens (pp. 79–81). Possession of the two moral powers is, for Rawls, a threshold notion, and not a maximandum. What he seeks is the “adequate development and full exercise” of those powers. So if the feminist criticism were that Rawls's theory lets in family forms which for the purposes of development of the moral powers are suboptimal, though still minimally adequate, this would not be a criticism that the logic of Rawls's own position would require him to address.

Let us then understand the feminist criticism as urging that the sorts of egregiously sexist practices we might see in some, say, orthodox and fundamentalist households make it impossible for the children raised in them to develop the two moral powers to even the requisite minimum degree. If this criticism is plausible, and Rawls's theory cannot meet it, then Rawls's theory is in serious trouble.

Is it plausible to think that boys raised in such families almost always grow into men who cannot acknowledge the equal political liberties of women, cannot desire to treat them as Rawls's two principles of justice require, and cannot act with civility toward them in the public forum? Is it plausible to think that girls raised in such families will almost always grow into women who cannot access their economic and social opportunities and who are therefore condemned to relive the lives of their mothers? These are obviously empirical questions, as we should expect given that the criticism involves an empirical claim about the psychological development of children under certain social conditions. But there are a couple of considerations that may cause us to wonder about the plausibility of the criticism.

First, it is probably no exaggeration to say that almost all of us who are now feminists were raised in sexist households—this is certainly true

of older feminists, though is perhaps increasingly less the rule with younger feminists.⁹ What this suggests is that it is not the case that sexist upbringings positively preclude the choice of feminist lives—though it may of course still be true that *most* girls raised in sexist homes are unable to throw off their yokes—and perhaps this is all the criticism needs. The more interesting question to ask is a comparative one: it is the question of whether a girl is *more* likely to preserve her option to choose a different lifestyle from the one she was raised in if she is raised in a feminist household than if she is raised in a sexist household. If developing and preserving the capacity to form, *revise*, and pursue a conception of the good is what we are after, we need to ask whether it is easier for a girl raised by feminist norms to adopt a sexist form of life, or whether it is easier for a girl raised in a sexist household to adopt a feminist form of life. Which form of upbringing makes it “more possible” to revise one’s conception of the good?

If we take seriously the idea that a female-subordinate mode of life is an option to be seriously considered, we may find that only those who have been introduced to such a system when young can really choose to embrace it later. One might argue, as it were paradoxically, that it is harder for a girl raised to think herself an equal to adopt a form of life in which she is an inferior than it is for a girl raised to think herself inferior to discover, once she hits the wider world, that she is in fact just as worthy and important as men and to adopt a corresponding mode of life.

This thought may have an analogy in the way we think about the question of who is better suited to choose among religions, either to have one of the many that exist in a pluralistic society, or to be atheist or agnostic. The reasoning that would support the feminist criticism would suggest that if we wish to best preserve a child’s options concerning religion, we should raise her in the less authoritarian, more liberal way, as an agnostic or perhaps atheist. But many children raised in those ways later report that they are quite unable to entertain seriously the idea of a religious view—it seems to them superstitious nonsense. It is not something they can take seriously (at least in part) because they lack the requisite sensibility.

In contrast, the numbers of lapsed Catholics are, as they say, legion. Some few Sauls turn into Pauls, yes; but it appears that vastly greater numbers of ordinary Joes revise or lose their childhood religion. So in this area at least, it may seem that psychological freedom of choice is best preserved by training a child to the sensibilities of the less anomic, or more authoritarian view. *If* the choice of sex roles is like this, then it may be that choice of a gendered or non-gendered mode of life is enhanced rather than diminished by allowing gendered upbringings within Rawls’s controlled context of justice as guaranteed by his two principles.¹⁰

But perhaps paradoxical arguments should make us suspicious, and

one tempting place to focus this suspicion is on the argument's assumption that the condition that allows for the greatest revision of our comprehensive doctrine, or for the widest possible choice of alternative doctrines, is best. Not only is such an assumption generally suspect (consider, for example, how we would regard the analogous epistemic doctrine that it is preferable for people to adopt highly fallible belief-forming mechanisms if this better facilitates changing one's mind!), but Rawls is probably not entitled to make it. This assumption smacks of a comprehensive "change is good, choice is good, diversity is good" doctrine (perhaps like J.S. Mill's comprehensive liberalism), a view to which Rawls's political liberalism would not be entitled, because it must present its political conception as *freestanding*. And the assumption also looks like it will sit poorly with Rawls's insistence that unreasonable comprehensive doctrines need not be tolerated even though ruling them out diminishes the range of comprehensive doctrines available to citizens. Rawls's theory will not allow him to rest an argument on the assumption that the best arrangements are those that maximize our options, or our capacity for change.

In fact, Rawls himself disavows this maximizing idea in a passage from Lecture VIII on the basic liberties and their priority. He writes:

First, a coherent notion of what is to be maximized is lacking. We cannot maximize the development and exercise of the two moral powers at once. And how could we maximize the development and exercise of either power by itself? Do we maximize, other things equal, the number of deliberate affirmations of a conception of the good? That would be absurd. Moreover, we have no notion of a maximum development of these powers. (p. 333)

So we are back to the threshold question. Do gendered families, with sexist divisions of labor that would be deemed unfair by the comprehensive doctrines of feminists so thwart children's development of the two moral powers that they cannot reliably attain these even to the requisite minimum degree, the degree necessary to participate in and sustain a system of social cooperation on fair terms?

V.

One thing worth noting is that the effect on children's development of a sense of justice of unequal divisions of parental labor cannot be determined without examining whether these unequal divisions are or are not perceived by those family members as unjust. We should also be cautious about simply assuming that the justice or injustice of a family arrangement can be directly "read-off" an objective description of how labor is divided.

Consider three imaginary cases of heterosexual unions in which labor is unequally divided between husband and wife, with the wife bearing the objectively greater share. In the first case, our couple are card-carrying egalitarian welfarists, and though the wife does more work, she is a dynamo who experiences the work as less burdensome than does her phlegmatic husband, and so their unequal division of labor results in an equal distribution of utility between them. In this case, their division of labor is not unfair by the standard of fairness which their comprehensive doctrine (namely egalitarian welfarism) advocates for associations like families, though that same doctrine may tactically require a different standard (like Rawls's two principles) for the basic structure of society. Indeed if our couple is to be part of an overlapping consensus on Rawls's conception of justice, they will have to hold a partially self-effacing welfarist doctrine, that allows that while we may directly seek to equalize welfare in smaller associations, the closest approximation to this result in the broader society is achieved when the basic structure is ordered by Rawls's two principles. At any rate, this couple's division of labor is just according to the standard of their comprehensive doctrine, and (supposing they explain this standard to their children) we have no reason to *assume* that the children they raise will either lack a sense of justice altogether, or affirm a conception of justice that is incompatible with the continued stability of the well-ordered society.

In the second case, we imagine a couple whose unequal division of labor is the result of their prior preferences combined with their standard of fairness. In this family the wife wished to move to a grand house with a huge garden because she expected to enjoy that manorial lifestyle, while the husband, content with modest lodgings, opposed moving from their small apartment on the ground that house maintenance, yard work, and more home to clean would create a massive amount of extra work that would be burdensome and detract from the quality of their life. They agreed that it would be unfair of her to impose the house and the extra work it entails on him, and they also agreed that it would be unfair of him to deny her the enjoyment of living in such a house. So they decided, in the interests of fairness, to move into the grand house, but to assign the majority of responsibility for its upkeep to the person who wanted it, namely the wife. She does an unequal share of the work because the lifestyle she wishes to lead is *costlier* than the lifestyle her husband wishes to lead. Now in this situation again, the unequal division of labor is dictated by the couple's conception of justice (which we might characterize as a "pay your own way" conception), in conjunction with their differing preferences concerning material luxury as against leisure, and we have, it seems, no reason to suppose that the children they raise, if made aware of the reason for their parents' division of labor, will either altogether lack a sense of justice, or possess a defective one.

In the third case, our couple have a common dream of amassing sufficient savings that they can take an early retirement and sail around the world for the rest of their days, visiting exotic ports of call and living the bohemian life. This dream requires that the husband devote himself to an extensive course of preparation to exploit his rare talent in the most lucrative job he can acquire, while she singlehandedly supports the family and raises the children during their psychologically formative years. Their division of labor is, during this period, observably radically unequal, though they expect that in their post-child-rearing but pre-retirement years, her share of labor will be much smaller than his (and they have taken out insurance against contingencies that would upset this expectation). It is their common goal, and their expectation of future compensation to the wife for her early sacrifices, that enables them to square this arrangement with their conception of fairness (a "communitarian" conception according to which labor contributions are determined by the requirements of achieving the common good). Do we have any reason to suppose that the children raised in this household must fail to acquire a sense of justice, or possess a perverted one? There seems no reason to suppose this, provided that their parents' rationale for the unequal division of labor is explained to them.

The moral of these three stories, I take it, is that we cannot read-off the effect on children's development of a sense of justice of a family's division of labor from a pure description of who does what without an understanding of how the participants justify that division of labor to one another. The observably unequal divisions of labor in these families are dictated by each family's own conception of familial justice, and we imagine that their children are made aware of the family's rationale in terms of justice for its unequal division of labor. But that means that their children *are* being raised in households where justice is taken to matter, and is thought to have been done, and it is difficult to see how we could have grounds for claiming that such family forms must have a stultifying effect on the moral development of the children raised in them. Perhaps it is true that to develop a sense of justice one must be raised in a household that operates according to *some* plausible conception of justice; but this does not imply that the operative conception of justice must be the one that we affirm, or that Rawls in his family life affirms. Provided the conception of intra-family justice allows its adherents to affirm the political conception of justice for the basic structure, it may be that many different conscientiously applied standards of family justice can allow for children's adequate moral development.

But if this is right, and if the conceptions of familial fairness contained in the comprehensive doctrines of the families we have just considered are to be allowed, on what basis shall we exclude religiously dictated non-egalitarian conceptions of family justice? *None* of these conceptions is the

correct one, from the point of view of a comprehensive feminist doctrine, and all are equally the issue of some comprehensive doctrine. Once we grant that unequal divisions of family labor are compatible with the moral development of children so long as they issue from and conform to the conception of family justice given by the family's comprehensive doctrine, and their rationale in terms of justice is explained to children, then there seems to be no justification for singling out religiously motivated inequalities for special condemnation. For it is not obvious that there is anything special about conceptions of justice based on religious comprehensive doctrines as opposed to conceptions based on secular comprehensive doctrines that would warrant their exclusion while the latter are allowed.¹¹ These religious families *also* have a rationale for their unequal divisions of labor, which, if perceived by their members as consistent with fairness, may be perfectly compatible with children's developing an effective sense of justice. So long as the operative intra-family conception belongs to a comprehensive doctrine that can be part of an overlapping consensus on Rawls's political conception to govern the basic structure, we cannot justifiably *assume* that children will be unable to acquire an effective sense of justice.

But if it is replied that no deviation from an equal division of labor between men and women is compatible with children's development of correct substantive views on family justice, and so state power should be used to legally enforce equal divisions of labor within families, our three cases allow us to appreciate how oppressive that enforcement might be. All three of our families, as well as the religious family, would judge this to be the imposition of an *unjust* division of labor. We might be inclined to reply that the fact that the women in these families would see that imposition as unjust simply testifies to their false consciousness. We may think that their objective inequality in the broader society requires that they delude themselves about what family justice is, and may wish to discount their sincerely affirmed beliefs and desires, and their perception of their interests, as ideological adaptations to their objectively disadvantaged circumstances.¹² While there may well be something to this reply against the background of our present, unjust, society, it is not clear that social conditions in the *well-ordered society of justice as fairness* would warrant our discounting people's similar beliefs and desires as false consciousness. I take up a related point in the next two paragraphs. What is clear enough is that legally enforcing an equal division of labor on these families would render their freedoms of conscience, association, and religion largely ineffective in ordering their family life, and would restrict or prohibit their pursuit of their not unreasonable conceptions of the good in the centrally important domain of family life.

In a society well-ordered by Rawls's two principles, where unequal divisions of family labor do *not* reflect women's inequality in the society

at large—do not reflect, for example, discrimination against women in employment that drives down their relative wages and so makes it more economically rational for women to do the domestic and childrearing labor—the remaining gendered divisions of labor will issue from people's comprehensive doctrines. Because from the state's point of view, citizens' relation to their comprehensive doctrines is a voluntary one, the gendered divisions of labor that issue from their comprehensive doctrines are also to be regarded as voluntary. While justice as fairness insists on eliminating *involuntary* gendered division of labor resulting from the pressures of an unjust broader society, it must protect such divisions when they are voluntary, precisely because they are connected with citizens' fundamental freedoms of religion and conscience.¹³

I would say finally that while it is comforting to think that the feminist concern is one that empirical science can settle for us, this is certainly an oversimplification. For the question is not simply whether sexist upbringings *do* compromise childrens' acquisition of the two moral powers, but of whether they *would do so in Rawls's well-ordered society*, against the background of a just basic structure ordered by principles of justice that were enjoying the support of an overlapping consensus of reasonable doctrines. It is difficult to tell what the effect of intra-family sexism would be if the broader society were truly well ordered, but it is plausible to suppose that the well-ordered society of justice as fairness would exert a liberalizing pressure on the reasonable comprehensive doctrines that could survive and flourish in it.¹⁴ Just as we see certain churches (for example the Episcopal Church) liberalize under the influence of constitutional and democratic politics, so we might expect to see other associations alter their comprehensive doctrines toward greater congruence with democratic principles. This suggests that we may have no way to settle in advance of actually living in Rawls's just society, the question of whether or not such a society could ensure the development of children's moral powers to a degree adequate to maintain the just society over time.

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Notes

¹ Susan Moller Okin, "Review of *Political Liberalism*," *American Political Science Review*, December 1993, p. 1011.

² Susan Moller Okin, "*Political Liberalism, Justice, and Gender*," *Ethics* 105 (October 1994), pp. 29-30 and 31. emphasis added.

³ Okin raises the issue of the reasonableness of sexist comprehensive doctrines because she believes it an inconsistency in his own theory for Rawls to accommodate them. But her

broader point does not depend on accepting Rawls's notion of reasonableness, as can be seen in her remark that "even if such religions were otherwise to pass Rawls's test of reasonableness, the degree and extent of sex discrimination that they both preach and practice should make them impermissible in a just society." *Political Liberalism, Justice, and Gender.* p. 32.

⁴ My arguments in this section have greatly benefitted from the study of Rawls's "Lecture IX: Political Liberalism: Women and the Family," typescript, 20 April 1994.

⁵ "Review of *Political Liberalism*," p. 27 n. 12, emphasis added.

⁶ "Review," p. 1010.

⁷ My thinking on this question has profited from discussion with Gerasimos Santas and Gary Watson.

⁸ This is one of Okin's many important suggestions for policies that would increase the equality of women offered in *Justice, Gender, and the Family* (New York: Basic, 1989).

⁹ Okin herself seems to recognize this possibility in *Political Liberalism, Justice, and Gender.* p. 38 n. 32.

¹⁰ Though if these assumptions are plausible, an interesting question arises. Suppose that most girls raised in feminist conditions *and* very many girls raised in sexist conditions prefer feminist forms of life. Wouldn't that count as evidence that feminist forms of life are (at least for women) *rationaly superior*? If so, wouldn't the rational superiority of feminist forms of life provide an independent argument for raising girls in feminist conditions? Of course, a systematic preference for feminist forms of life might be explained in some other way, as being more in line with selfish interests, for example, or as in some way easier or less demanding than sexist forms of life, and we may not always think even majority preferences good indicators of value. But if these alternative explanations are unpersuasive, we might wish to develop an argument along the lines suggested. I am grateful to Janet Levin for alerting me to this possibility.

¹¹ One might urge that there *is* something special about religiously based sexist divisions of family labor, namely, that they assert the inherent inferiority of women, or women's subservient position relative to men as axioms. But it is not at all clear that these claims are true; a religious view might defend a sexual division of labor on the grounds that women are different (rather than inferior)—a kind of "separate but equal" argument—or women's subordinate status might be said to be derived from more basic religious assumptions that are not themselves sexist. To establish that religion-based divisions of labor are especially objectionable, we would need to rule out these alternative sorts of account. Religious families themselves may view their family division of labor as an instance of the third sort of case described above.

¹² I am indebted to Ed McCann and Kadri Vihvelin for calling this worry to my attention.

¹³ This is a point Rawls develops at some length in the typescript referred to in note 4 above.

¹⁴ Rawls discusses this possibility in *PL*, Lecture V, section 6.