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Gender, Choice and Partiality: A Defense of Rawls on the Family

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Introduction.

Historically, it has been common for liberals to hold that the private sphere of activity must be protected against state interference in order to maximize individual freedom.¹ The family is usually assumed to fall within the private sphere of activity, and thus liberal theorists commonly hold that the family should be immune from state intervention, except where there are clear violations of the rights of family members (such as in cases of physical abuse). Some non-liberal theorists – Plato, for instance – have proposed the dissolution of the private family.² But, for the most part, liberal theorists have accepted the private family as an immutable fact of social life.

In recent and contemporary liberal theory, however, the family³ has become a site of contention. This has become clear in criticisms leveled at John Rawls' influential works *A Theory of Justice* and *Political Liberalism*. Feminists have argued that the family, as we know it, falls short of justice and have worried about the effects of the institution of the family on women and girls.⁴ First, feminist critics have held that if women and girls are to truly be ensured equal treatment, then Rawlsian liberalism must be less tolerant of sexist non-public associations (including sexist and patriarchal families). Second, feminist critics have argued that even families which are not explicitly sexist or patriarchal are typically unfair for women and girls. Third, feminists have argued that both sexist and standard families fail to adequately provide for the moral development of children, and thus fail to fulfill one of the main tasks assigned to the family in Rawlsian liberalism.⁵ If feminist critics are right, it is no small matter for the Rawlsian.⁶ If feminists are right in the first case, the Rawlsian will have to either have to concede that her version of liberalism is insufficient in guaranteeing equal treatment for all of society's members, or she will have to give up on allowing individuals wide latitude in the associations they choose and the conceptions of the good they endorse. Neither option is very palatable. And if feminists are right in the second and third cases, the Rawlsian's commitments to the principles of fairness might commit her to weakening or abolishing the family in the well-ordered society. And if the family is to be significantly weakened or abolished, some alternative will have to be provided for raising children and providing for their moral development. That is, society will have to re-ordered in a more radical way than the Rawlsian may have previously recognized.

In what follows, I will defend the family in Rawlsian liberalism against the above-mentioned criticisms. I hold that feminists should not be eager to abandon the institution of the family nor should they be eager to significantly weaken family autonomy and family privacy. The Rawlsian, it

seems, cannot license public institutions to be fully responsible for the raising of children because of the role that conceptions of the good play in moral development. But other alternatives to the family are just as likely, if not more likely, to fail in just the ways the family does. Finally, I hold that the family provides the space for individuals to exercise their capacity to be partial. The exercise of that capacity, I hold, is best thought of as a primary good. The basic structure of the well-ordered society should be organized so as to secure this good for all individuals, and the best way to do this seems to be to allow for significant family autonomy and family privacy.

I. Rawlsian Liberalism and the Family.

In his 1971 landmark work, *A Theory of Justice*, John Rawls details a theory of “justice as fairness” which is meant to “generalize and carry to a higher level of abstraction the traditional conception of the social contract” (p. xv, PL; p. 3, TJ). Traditional contract theory, as found in the works of such thinkers as Locke, Hobbes, Kant and Rousseau, had explained the legitimacy of socio-political arrangements in terms of putative contracts entered into by the members of particular communities. Socio-political arrangements were legitimate and basically just, that is, if they were the result of freely chosen agreements among the adult members of a community. But critics like Hume had raised problems for thinking of social contracts either as hypothetical constructs or as actual historical events.

In Rawls’ theory, the foundational agreement is performed as a thought experiment. Principles of justice are justified as those which would be chosen in “an initial situation of equality,” the Original Position (p. 21, TJ). In the Original Position, self-interested (though not selfish) rational choosers do not have knowledge concerning their natural and social assets, their particular conceptions of the good, their psychological make-ups, or the particulars of their society (p. 137, TJ). This veil of ignorance ensures that the hypothetical choice situation is fair and individuals in it are free and equal. While the agreement reached in the OP is hypothetical, Rawls holds that the justification it provides is not merely hypothetical. Since the OP best models a situation of fairness, the principles chosen there are those that best approximate the justifiable “limits on fair terms of social cooperation” (p. 21, TJ).

The principles of justice Rawls endorses as those which would be chosen by parties to OP are the following:

- (1) Each person has an equal right to a fully adequate scheme of equal basic liberties which is compatible with a similar scheme for all;⁷ (Liberty Principle, or LP)
- (2) Social and economic inequalities are to satisfy two conditions: (a) first, they must be attached to offices open to all under conditions of fair equality of opportunity (Equal Opportunity Principle or EOP); and (b) second, they must be to the greatest benefit of the least advantaged members of society (Difference Principle, or DP) (p. 291, PL).⁸

The basic liberties mentioned in LP include individual freedom of thought and liberty of conscience, political liberties and freedom of association, the rights and liberties required by the rule of law, as well as “the freedoms specified by the liberty and integrity of the person,” (presumably including such liberties as the right to privacy) (p. 291, PL). Moreover, Rawls recognizes an ordering of these principles such that the first principle of justice outweighs the second principle. In

TJ, Rawls calls this a ‘lexical ordering’ of the two principles which requires that the first principle be satisfied before the second. As Rawls sees it, this ordering entails that basic rights and liberties cannot be traded off to correct for social or economic inequalities, nor for perfectionist reasons or reasons of public welfare (pp. 42-43, TJ; p. 61, TJ; pp. 294-299, PL).

In *A Theory of Justice*, Rawls recognizes the family as part of the basic structure of society and as crucially implicated in the development of the moral development of individuals (p. 7 and pp. 458-504, TJ; p. 258, PL). However, Rawls also notes that while features of the basic structure are under some control of the principles of justice (LP, EOP, and DP), we need not think that the principles of justice directly govern the internal workings of families, or churches, universities, or voluntary associations. He writes:

There is no reason to suppose ahead of time that the principles satisfactory for the basic structure hold for all cases. These principles may not work for the rules and practices of private associations or for those of less comprehensive social groups. They may be irrelevant for the various informal conventions and customs of everyday life (p. 8, TJ).

In *Political Liberalism*, Rawls holds that “[t]he role of institutions that belong to the basic structure is to secure just background conditions against which the actions of individuals and associations take place” (p. 266, PL). As in TJ, the principles of justice apply to elements of the basic structure by “imposing certain constraints,” for example, by disallowing violations of certain basic liberties. But here too, Rawls denies that the principles of justice accepted for society as a whole must internally order all sub-elements within that society (p. 468, PL). Thus, for example, voluntary organizations are not required to distribute their resources such that the least advantaged in these organizations will benefit (as per DP). In contrast, resources which belong in common to everyone in a given society will, presumably, be subject to DP.

But what determines the reach and influence of the principles of political justice? Why should we think that these principles are directly applicable to the workings of certain social institutions, but not to others? What principled distinction can be drawn here between the “political world” of elections, positions of authority, and common resources and the “non-political” world of associations, churches and families? These questions are directly relevant to feminist criticisms of Rawls on the family. Feminists have criticized Rawls for failing to apply the principles of justice more completely to the family. And both feminists and egalitarians have criticized Rawls for failing to fully appreciate how the institution of the monogamous family may influence and undermine social justice. Let us now examine these criticisms in some detail.

II. The Family as A Non-Public Institution.

In the following sections, I will consider three lines of feminist criticism against Rawls on the family. These criticisms have been forcefully laid out by Susan Moller Okin, and I will concentrate on her arguments in what follows.

In addition, I make an interpretive assumption about the relation between Rawls’ *A Theory of Justice* and *Political Liberalism*: I assume that these two works are largely consistent with one another and that PL is best read as a continuation and expansion of TJ, not as a repudiation of it. Of course, PL does depart from TJ on one significant issue – where TJ assumes a comprehensive

account of justice shared by all members of a society, PL makes no such assumption. Instead, PL only holds that an “overlapping consensus” about justice must be secured (p. xix, PL). In PL, Rawls means to take more seriously “the fact of reasonable pluralism,” the fact that democratic societies are characterized by deep and enduring differences in conceptions of the good and ways of living (p. xvi-xviii, xxxvii, xxxix, PL). The main problem PL sets out to address is how to provide for the stability of a democratic and well-ordered society given this sort of pluralism (p. 4, PL).⁹

In addressing this problem, Rawls distinguishes between public/political life, which is governed by public reason and the political conception of justice, and non-public/non-political life, in which different conceptions of the good are freely endorsed and acted on by individuals and groups (p. 137, PL). If they are to be stable and lasting, democratic regimes must secure agreement on the political conception of justice which governs public life. But democratic regimes should expect no such agreement in non-public life. Individuals in democratic regimes will disagree in their religious, philosophical and moral views; they will have different cultural and ethnic backgrounds; they will have different interests, hobbies, affiliations, attachments and loyalties; they will participate in divergent family structures and raise their children in distinct ways.¹⁰

Feminists take issue precisely with the distinction Rawls draws between the public/political and non-public/non-political. There are two main ways that feminists have questioned the public/private distinction: (a) by doubting whether a principled and non-sexist distinction can really be drawn between the allegedly public and the allegedly private;¹¹ (b) by doubting that the family is really private, even if the public/private distinction can be sensibly drawn.

So Okin holds that “the family is a social institution that defies [Rawls’] political/nonpolitical dichotomy” (p. 27, Okin 1994).¹² On Okin’s account, the family is political in at least two ways: (i) Questions of power, distribution of resources, and differences of interest¹³ are at least as relevant within families as they are outside of families; (ii) Families have significant social and political effects. As Rawls has it, elements of the basic structure have, “deep and long-term social effects and in fundamental ways shape citizen’s character and aims, the kinds of persons they are and aspire to be” (p. 68, PL). It is, furthermore, plausible to think that the family has greater influence on the character and aims of individuals than other elements of the basic structure, such as the structure of markets. Thus, Okin holds that the family should not be immune to the principles of justice in the well-ordered society.

Understanding Okin’s criticism here helps, I think, to head off a misguided objection. Defenders of Rawls (including Rawls himself) have alleged that Okin misunderstands justice as fairness by arguing that, since families are part of the basic structure, they should be strongly subject to the principles of justice. These defenders point out that since Rawlsian liberalism allows that institutions can be part of the basic structure without being internally ordered by the principles of justice, there is no reason to think that the family must be internally ordered by the principles of justice.¹⁴ That is, individual families need not be accountable to the public conception of justice but may be largely autonomous in how they are organized, how family decisions are made, and how family resources are allocated.

These responses, however, miss the force of Okin’s objection. It is true that if the institution of the family, as we know it, is to be retained in the well-ordered society, it will be largely autonomous.

But this response begs the question against the feminist critics of Rawls. Feminists wonder precisely whether an institution like the contemporary family *should be* retained in the well-ordered society, or whether the well-ordered society should revise or replace the institution of the family as we know it. Defenders of Rawlsian liberalism, then, cannot simply assert that the family is non-public and thus is only subject to minimal constraints from the principles of justice. They must justify regarding the family as a non-public institution in this way.

III. Reasonable Pluralism, Marriage and the Freedom of Association.

Rawls allows for a broad spectrum of comprehensive doctrines in the well-ordered society. For example, Rawls is willing to admit into the well-ordered society “various religious sects [which] oppose the culture of the modern world and wish to lead their common life apart from its unwanted influences” (p. 199, PL). Such sects should be tolerated in the well-ordered society, on Rawls’ view, just in case their members abide by the political conception of justice and are willing to defend their public claims on grounds acceptable to those who do not affirm their comprehensive doctrine.¹⁵ Furthermore, Rawls requires that these sects allow that children are educated so that they understand the public principles of justice, and their education “should prepare them to be fully cooperative members of society and enable them to be self-supporting” (p. 199, PL).¹⁶

But Rawls also holds that the well-ordered society is not obligated to tolerate comprehensive doctrines that are unreasonable (p. 210, PL). Reasonable doctrines are those that are consistent with the political conception of justice and those that respect the limits this conception imposes.¹⁷ Rawls allows that families, religions and non-public groups which are sexist or patriarchal may nonetheless qualify as having reasonable comprehensive doctrines as long as they do not attempt to over-reach the limits of the public conception of justice.

In contrast, unreasonable comprehensive doctrines have the following features: such doctrines (a) advocate or involve the violation of basic rights and liberties, as these are affirmed in the public principles of justice; (b) work to undermine the political conception of justice; (c) don’t allow for the adequate development of the two central moral powers of persons, the capacity to formulate a comprehensive doctrine of the good and a sense of justice; (d) advance claims that cannot be justified on the grounds of public reason (pp. 174-210; p.187; p. 190; p. 209, PL).¹⁸ Impermissible conceptions of the good are thus somehow incompatible with the principles of political justice (p. 180, p. 196, PL).

Okin finds, however, that religious sects as those Rawls mentions are “typically highly patriarchal, they advocate and practice the dependency and submissiveness of women” (p. 31, Okin 1994). As such, Okin holds that Rawls should regard such sects as championing unreasonable comprehensive doctrines in their views about women and girls. On the other hand, Okin argues, if Rawlsian liberalism affirms wide tolerance for sexist comprehensive doctrines, it betrays its commitment to equal political and civil liberties for women and girls. Thus, Okin holds that there is a tension between the Rawlsian commitment to tolerance for divergent comprehensive doctrines and its commitment to securing equality in basic rights for individuals. Okin advocates resolving the tension in favor of equality (p. 32, Okin 1994).

But let us clarify matters here. I think we must first separate out two questions: Is the family

inimical to the interests of women? and: Is the family inimical to the interests of girls? As we shall see, the family functions quite differently for adult women than it does for children. Let us handle the situation of adult women with respect to the family first. For the Rawlsian, the family is a voluntary association for adults, including adult women. In this respect, families are like other voluntary non-public associations (religions, club, social groups, etc.) (p. 221, 301, 468, PL). Adult citizens in a well-ordered society may choose whether or not to subject themselves to the authority of a church or an organization. And, in protecting the freedom of conscience and freedom of association, the well-ordered society also protects the rights of a citizen to divest herself from an association, to cease practicing a given religion, or to change her mind about fundamental moral or philosophical issues (p. 221, fn. 8, PL).¹⁹

Similarly, in a well-ordered society, adults can choose whether to be married, to remain single, or to divorce. Families can no more violate the basic rights and liberties of individuals than other non-political associations can. “The equal rights of women and the basic rights of their children as future citizens,” Rawls holds “are inalienable and protect them wherever they are” (p. 471, PL). In this way, Rawls does not regard the family as a private sphere completely immune from public scrutiny or governmental interference. “If the so-called private sphere is alleged to be a space exempt from justice,” Rawls writes, “then there is no such thing” (p. 471, PL).²⁰

In addition to affirming the rights of individuals to marry or not marry, the Rawlsian affirms the right of individuals to choose among a variety of family forms in the well-ordered society. Thus, individuals may choose to have traditional marriages in which husbands are the “heads of the family”. In these families, husbands would be assigned the role of primary bread-winners and primary decision-makers, whereas wives would be assigned primary responsibility for housework and childcare, and might also be expected to respect the authority of their husbands.²¹ Individuals might also choose to have marriages in which decision-making is more equally shared. Individuals might choose to have marriages in which household tasks and childcare are more equally shared. Individuals might choose to have marriages in which both husband and wife work outside the home, and childcare is at least partly the responsibility of someone other than the parents.

Individuals might choose not to have children. Individuals might choose same-sex partners.²² The acceptable forms of family life are broad and diverse for the Rawlsian.

Consider a woman who we will call Fatima. Fatima has been raised in an orthodox religion. She marries a man also raised within this orthodox religion. Let us say that the orthodox religion here holds that men are morally and intellectually superior to women. Say further that Fatima enters into a marriage of the kind endorsed by her religion, one where the wife is expected to acquiesce to the will of her husband.

As objectionable as we might find this comprehensive doctrine, we have no ready reason to condemn this comprehensive doctrine as unreasonable on Rawlsian grounds. As long as adherents to this religion abide by the public conception of justice – as long as adherents, for example, make no claim that the strict rules of their religion apply to all members of society – the Rawlsian will find it necessary to tolerate this comprehensive doctrine. The Rawlsian recommends extreme conservatism when it comes to placing comprehensive doctrines beyond the pale of reasonableness, because such moves are so likely to be arbitrary and to violate the first principle of justice (LP). Feminists cannot claim that sexist comprehensive doctrines are unreasonable, then, for

the fact that they are sexist. While feminists might object to the comprehensive doctrines that are endorsed by sexist or patriarchal non-public associations, a Rawlsian feminist must tolerate these doctrines as long as those committed to these doctrines are willing to abide by the fair terms of cooperation with others in society.²³

At this juncture, some may be tempted to respond that families are not voluntary for women in the way the Rawlsian assumes. One might hold that Fatima, for example, does not freely choose a traditional marriage because everything in her upbringing, her family, and her cultural background encourages her to believe that women should be subservient to men, that women must marry, and that women should assume traditional roles within marriages. This worry should be taken seriously, I think, because it is no doubt true that women often act under the pressure of socialization when they choose traditional marriages, or any marriage for that matter.²⁴ And this worry really asks us to look more closely at socialization and moral development of children (which we will do presently). The Rawlsian, however, will assume that adult women are, by and large, free and equal citizens and thus are capable of choosing to join or exit non-public associations such as families.

The Rawlsian holds that nearly all adults possess to a sufficient degree the moral powers which will allow them to make autonomous choices. These moral powers are: (a) the capacity to form and revise one's conception of the good and (b) a sense of justice. A Rawlsian must, of course, make provision for individuals who do not possess the requisite moral capacities because of, e.g., mental deficiency or illness. Individuals who are deficient in the two moral powers, for example, might not be allowed to enter into contracts or be held to the same standards of responsibility and consent as other citizens.²⁵ The well-ordered state may also not grant the full measure of rights and liberties to individuals who are deficient in this way.²⁶ Such individuals, for example, may be prevented from getting married at all.

Might a feminist want to claim that, as a result of her upbringing, a woman raised in an orthodox religion cannot undertake a traditional marriage as a voluntary venture? This would be a perilous line of argument. We should be extremely cautious in assuming that an individual must be morally defective if she makes a choice with which we disagree. Individuals must be assumed to possess the requisite level of moral development unless strong reasons can be provided for thinking otherwise. For, to view a person as not responsible in this way is to regard her as something less than a free and equal citizen. It is to view her as someone not capable of participating in the cooperative venture that is the well-ordered society (p. 33, p. 74, PL).

Thus, if Fatima is thought to be incapable of voluntarily entering into an orthodox marriage, then she must also be thought incapable of voluntarily entering into any other marriage (even a more egalitarian one), as well as incapable of assuming the rights and duties of a free and equal citizen.²⁷ The Rawlsian can grant that women's choices of traditional marriages might be shaped or influenced by their upbringing and cultural background, but the bar for regarding such choices as non-autonomous is set quite high. As long as individual's moral powers have been developed to the *minimum* requisite degree, her choices must be respected by the state.²⁸

I conclude that Okin's tension is dissolved. Holding an illiberal doctrine is not sufficient to count as actively undermining the political conception of justice. Thus feminists cannot hold that sexist doctrines are unreasonable unless adherents to these doctrines actively undermine the political

conception of justice. If marriages are voluntary and any violations of basic rights that may occur within families justify state interference, there appears to be no obvious tension between freedom of conscience and freedom of association, on the one hand, and the protection of basic rights and liberties for women, on the other. In the well-ordered society, women are not coerced or forced into marriages; they enter into marriages of their own accord, and may exit marriages without penalty. The basic rights of women are protected within and without marriage.

If feminists are to respect women as free and equal persons, they must also respect their ability to choose comprehensive doctrines and non-public associations that are non-feminist. It would be implausible and dangerous to hold that adult women who participate in sexist associations are, thereby, deficient in the moral powers required for making free choices.

IV. Gendered Divisions of Labor in Families.

Feminists are not only troubled by families that adopt explicitly sexist or patriarchal comprehensive doctrines. They are also troubled by ‘normal’ or ‘standard’ families that do not avow explicitly sexist or patriarchal comprehensive doctrines. Rawls assumes in TJ that most families are, by and large, characterized by fairness and by relationships of love and trust.²⁹ And in PL, Rawls reaffirms this claim: “I do assume that in some form the family is just” (p. xxix, PL). But he offers no evidence or argument for the claim that the contemporary form of the family is just. Feminist critics of Rawls, on the other hand, have doubted whether the institution of the family as we know it is just. Specifically, they have wondered whether the family as characterized by a gendered division of labor is just. Historically, women have assumed a disproportionately large share of housework and childcare within families. This is still true today, even in households where both the wife and husband work full-time.³⁰

One consequence of this unequal division of domestic labor is that married women do more unpaid work than married men. Another consequence is that married men have more leisure time than married women. Studies also suggest that the gendered division of domestic labor affects women in the workplace. Because women are the primary care-givers within families, it is argued, they are less able to invest their time and energy into developing marketable skills. As primary care-givers, women are also apt to choose jobs which offer flexibility, even where these jobs offer less pay or benefits. For these reasons, women tend to be segregated into low-wage, low-status jobs where these jobs offer minimal job security and little chance for advancement.³¹ To some degree, these factors may explain why American women, on the whole, earn on average 23% less than what men earn.³² These factors may also explain the different economic fates of men and women who divorce – while men generally find themselves in a stronger economic position,²⁹ women generally find themselves in a weaker economic position after divorce.³³

One might well question whether families in which women earn less and do more unpaid labor are truly just. The standard gendered family is open to critique from two Rawlsian perspectives: (1) from the perspective of an adult woman choosing whether to participate in a typically gendered family; and (2) from the perspective of the Original Position. Considering the family from the first perspective, it seems that similar considerations govern as those regarding families that avow non-feminist comprehensive doctrines. That is, gendered families will be regarded by the Rawlsian as voluntary associations and adult women may opt in or opt out of these associations. As long as the

well-ordered society ensures that women are not unjustly coerced into such arrangements and as long as society ensures that women are not unjustly penalized if they leave such arrangements, it seems that the Rawlsian must respect the right of adult women to freely choose such arrangements. These choices must be regarded as expressions of a woman's fundamental right to free association.³⁴

This response may strike feminists as insufficient since it, arguably, does not account for economic pressures or socialization pressures. We will talk more about socialization and child development below. As for economic pressures, it seems open to the Rawlsian to allow that economic inequalities such as those resulting from divorce might be handled by the Difference Principle. That is, such inequalities might be mitigated if they can be shown to benefit the least well-off -- in the current economic climate, divorced or single women and their children.

Considering the institution of the family from the Original Position asks us to consider whether parties in a situation of initial fairness would approve the family as an element in the basic structure of the well-ordered society. The first perspective assumes that the family is already part of the basic structure and asks whether or not adult women are free to participate in it. To consider the family from the perspective of the Original Position, in contrast, asks us to consider whether the family as we know it should be revised or even eliminated. One might think that the Original Position does not recommend the typical gendered family. It seems, that is, unlikely that free and equal individuals acting behind the veil of ignorance would choose an institution in which it might turn out that they had responsibility for the greatest share of unpaid labor while being made economically vulnerable in the process.

But parties to OP should not be thought to be choosing between families characterized by a gendered division of labor and families that are not so characterized. Presumably, parties to OP will choose whether or not to allow marriages as voluntary associations in the well-ordered society and it will be up to individuals whether these marriages are characterized by a gendered division of labor or not.

In addition, however, parties to the OP will choose whether or not to allow voluntary marriages but families, where these are non-public associations which include children. In TJ, families are charged with the moral development of children. One important question, then, will be whether or not the functions of the family are best handled by institutions other than the family, either public or non-public. We will consider whether parties to OP would affirm the institution of the family as we know it, by considering the role of the family in moral development.

V. The Family as a School for (In)Justice.

While the Rawlsian views marriages and families as voluntary associations for adult women, she cannot regard families as voluntary associations for children since children are not autonomous in the way required to enter or exit non-public associations. In addition, it is precisely the family that is normally charged with developing the sort of autonomy in children that will later enable them to participate in voluntary associations on free terms. We can head off a quick objection here. One might be tempted to say that, because children cannot participate in families with full autonomy that families are coercive arrangements for children, and thus that families are unjust on this basis. But, of course, until children develop the capacity for autonomous decision-making, any association

of which they are a part will not be fully voluntary for them. Here we must appeal to what is in a child's interests until the child becomes an adult who can determine her own interests and choose accordingly.³⁵

Okin, John Stuart Mill, and other feminists have worried that the family as we know it is a poor "school for justice". The line of argument here is the following: moral development in children requires families that operate on fair principles. Families that are characterized by a gendered division of labor do not appear to be governed by fair principles (perhaps because individuals could be expected to choose against such arrangements in the OP.) Families that are not governed by fair principles cannot reliably inculcate an effective sense of justice in children. Therefore, the contemporary institution of the family – that is, the dominant, gendered form of the family – cannot reliably inculcate an effective sense of justice in children.

The problem here seems to be two-fold. For one, feminist critics hold that gendered families do not adequately develop an effective sense of justice in either boy or girl children. Okin notes a study which finds that, in homes where the division of domestic labor is very unequal³⁶, adolescent girl children do 25% more in household chores than girls in other households. Boys in these households do 60% less in household chores than boys in other households. Okin concludes: "Since it is difficult to imagine that the extra work on the part of the girls is purely voluntary, it seems that the boys are learning the pattern of family injustice established by their own fathers and, like them, [are] getting away with as little as possible" (p. 36, Okin 1994). The idea here seems to be that children who are raised in families with an unfair division of household labor along gender lines are likely to reproduce this pattern. This concern is likely to extend to families where the gendered divisions are not so pronounced. The worry, I take it, is that girls will fail to develop an effective sense of justice because they will fail to count their own interests strongly enough; whereas boys will fail to develop an effective sense of justice because they will learn to exploit and take advantage of others.

The other, related concern is that gendered families create special barriers for girl children which undermine their status as free and equal citizens in the well-ordered society. If girls are taught that they are less valuable and that their interests are less important than those of their male counterparts, they may consequently fail to be able to realize the full extent of their talents and abilities. In this way, fair equality of opportunity may be denied to women. Girls may also be undermined in their capacity for self-respect which is, as Rawls notes, the most important primary good (pp. 440-446, TJ; pp. 318-320, PL). In TJ Rawls claims that, given the over-riding importance of self-respect, "the parties in the original position would wish to avoid at almost any cost the social conditions that undermine self-respect" (p. 440, TJ). If, therefore, the family as we know it is a key part of the social conditions that serve to undermine self-respect in women and girls (as some feminists claim), it seems to follow that the well-ordered society should weaken or abandon the family as an institution.³⁷

Before we discuss the responses to these arguments, let us understand the importance of the development of the two central moral capacities for the Rawlsian (a sense of justice and a capacity for a conception of the good).³⁸ These moral capacities are essential for the well-ordered society in at least two ways. First, it is in virtue of these moral capacities that persons are free and equal (p. 19, pp. 30-34, p. 109, PL). Persons are free in that they can choose their ends, develop a rational

plan of life in accordance with these ends, can rework their ends and commitments, and can be held responsible for the ends they choose. In virtue of their moral capacities, persons are also regarded as equal and thus can be included as full participants in a well-ordered society, a fair system of cooperation that extends over generations (p. 18-19, PL).

Secondly, Rawls holds that development in individuals of a minimally effective sense of justice is necessary to ensure the long-term stability of the well-ordered society (pp. 141-142, PL; pp. 453-458, TJ). Individuals in the well-ordered society must have, as it were, a sense of fair play. They must be willing to offer fair terms of cooperation justified in terms others can agree to (thus not on the basis of any particular comprehensive doctrine of the good). And individuals must be willing to abide by the terms of fair agreement, even when this may sometimes mean that some of their own interests are not accommodated (p. xlii, p. 16-17, p. 86, PL; p. 467, TJ). Having an effective sense of justice allows individuals to resist the temptation to benefit unfairly at the expense of others (p. 142, PL). If many individuals lacked such a sense of justice, society would fail to work as a cooperative enterprise.

In *A Theory of Justice*, Rawls makes the family central in moral development. He holds that the family provides the basic relationships of love and trust which ground self-worth and encourages the desire to act fairly (pp. 458-512, TJ). Children first learn to follow moral norms through the wish to please their parents (the morality of authority). Children next develop ties of friendship and association. They learn to function in small cooperative groups and to evaluate their own performances with respect to their responsibilities within these groups (the morality of associations). Finally, individuals learn a morality of higher-order principles. In this final stage, “moral attitudes are no longer connected solely with the well-being and approval of particular individuals and groups, but are shaped by a conception of the right chosen irrespective of these contingencies” (p. 475, TJ). This final stage allows persons to be governed by principles, such that “we want to live with others on terms that everyone would recognize as fair from a perspective all would accept as reasonable” (p. 478, TJ).

Okin approves of the picture of moral development from TJ, but doubts whether the family (as we know it) adequately ensures that development. Several commentators have responded to Okin on this point by noting that Rawls’ account of moral psychology requires that individuals only achieve a *minimum* sense of justice.³⁹ While it might be plausible that families organized on fair principles are likely to be better at inculcating a sense of justice in children, commentators have doubted whether such families are necessary for inculcating a minimum sense of justice. Children raised in highly gendered families, for example, do seem capable of developing a minimally effective sense of justice – if not a lively sense of justice. But I think all Okin need say here is that families organized on fair principles will be *more reliable* at producing a minimally effective sense of justice in children. A child may develop a sense of justice in an unjust family, but this may be regarded as a largely fortuitous occurrence. The well-ordered society for the Rawlsian will be one where a minimally effective sense of justice is reliably produced, not one where it only fortuitously occurs.

Parties to the OP, then, should be concerned with whether including the non-public family as an element in the basic structure will be the most reliable way to develop the two key moral powers in children. Okin holds that the family, at least the family characterized by a gendered division of labor, will not be a reliable way to inculcate these two moral powers. I should note here that Okin

does not explicitly call for the abolition of the institution of the family on Rawlsian grounds. She does claim that, in some way, families must be made just. But she does not specify how this is to be done. How might the well-ordered society counter gendered inequalities in families? One way would be to allow for greater state interference – that is, to reduce the degree of autonomy and privacy that families have enjoyed.⁴⁰

VI. Family Autonomy, Family Privacy and Alternatives to the Family.

Here, again, it seems that we should view the family from the perspective of the OP. What we are asking, then, is whether the family should be allowed in the basic structure and, if allowed, what provision should be made for it. The choice, again, will not be of the gendered family *per se* since parties to the OP will not dictate such specific family forms. But parties to the OP may be expected to rule on such features as family autonomy and family privacy. I understand these as follows:

Family Autonomy (FA): Families are autonomous when adults in those families are permitted to make important decisions such as regarding the way children within those families are raised, what comprehensive doctrine(s) are adopted by the family, what influences are desirable for children in the family, what cultural identity is promoted, what language is spoken at home, what methods of discipline are used, what schools children attend, where the family is to live, etc.

Family Privacy (FP): Families are private when the decisions adults in those families make are not, in general, expected to conform to the dictates of public debate and where, often, those decisions are not open to public scrutiny in the first place.⁴¹

Family autonomy and privacy, then, should be understood as limiting the power of the state with respect to families and children within families. FA and FP do not, by themselves, license gendered divisions in the family. But one can well see how FA and FP might allow gendered families to exist by protecting the decisions adults in such families may make. So, while parties to the OP cannot strictly choose against gendered families, the considerations Okin raises might convince parties to choose to weaken or reject FA and FP. Weakening FA and FP would have the consequence that more state scrutiny and control of families would be allowed beyond the prevention of violations of LP. Rejecting FA and FP might, in effect, abolish the family as we know it.

But I think feminists should be reluctant to significantly weaken family autonomy. Say that the prevailing culture is sexist, as many feminists believe, and portrays women and girls in derogatory ways. With strong family autonomy, feminist parents are empowered to limit these influences on their girl and boy children and, to some degree, shield children from such sexist influences. If FA is weakened, parents may not be empowered to make decisions about what media children see, what social roles are portrayed as desirable to children (princess, super-model, GI Joe), and what ideals and values are promoted to children. Public intrusions into the family might be designed to further gender equality, but it seems just as likely that such public intrusions might serve to help to socialize children in ways feminists find objectionable.

Feminist critics might hold that defects with the family justify doing away with the family entirely in the well-ordered society. In this case we are owed some account of what institutions would be

responsible for the raising of children and for children's moral development, in the absence of the family as we know it. There appear to be two main choices here. We might hold that public institutions should be primarily responsible for the raising of children. Or we might assign this responsibility to non-public institutions. Should we think that public institutions will be more likely to guarantee equal opportunity for girls than the non-public families? Recent studies have shown that girls are systematically treated unequally in public schools.⁴² One may worry that family autonomy and family privacy helps to shield conditions which are detrimental to fair equal opportunity for girls. But it seems just as plausible that state-run institutions might fail as regularly as families do.

But the first option seems to be a non-starter for more fundamental reasons. Ron Mallon, and Will Kymlicka, for example, argue that children need to be provided with starting points in their moral development, if they are to develop their capacity to form and revise a conception of the good.⁴³ These starting points are provided by the comprehensive doctrines taught by families and cultures. By being raised in a particular family (with a particular cultural identity), children have access to a particular set of beliefs, values, ideals, traditions, social roles, attachments, etc. Children may come to largely accept, largely reject, or more or less significantly revise the comprehensive doctrine they are taught. However, as Mallon argues, it is necessary that children start with *some* comprehensive doctrine. Without some starting comprehensive doctrine, the individual in question would be incapable of developing a meaningful capacity for a conception of the good (p. 288, Mallon 1999).⁴⁴ Public institutions cannot endorse particular comprehensive doctrines, in Rawls' view, since to do so would violate state neutrality. Therefore, given some plausible assumptions, public institutions could not take over the moral development of children if the family were eliminated from the basic structure.

This would leave non-public associations such as clubs, churches and professional organizations to do the work of raising children, if we are to eliminate the institution of the family or significantly weaken family autonomy and privacy. Again, I think one may plausibly worry whether such institutions are any more reliable at developing children's moral capacities than the family as we know it. It seems that these associations may be just as apt to fail as families and as public institutions. I do not assume that children could not be provided with close affective relationships in such settings. But we should note two things: (a) it is unclear whether these associations will be any more reliable at inculcating a minimal sense of justice and at developing a capacity for a conception of the good than families characterized by FA and FP; (b) if we extend FA and FP to these non-public associations they will, in effect, become families. As such, we do not have convincing reasons to eliminate the family as we know it in favor of non-public associations empowered to do the work of moral development.

Finally, I want to suggest an additional important reason for retaining the family and extending to it some form of family autonomy and family privacy. It is this: We might well regard partiality as central to our psychological and moral lives. Our particular attachments, relationships and loyalties are often essentially implicated in what gives our lives meaning. The capacity to be partial, that is, might be seen as a primary good in Rawlsian terms, as something we should want whatever else we want. Rawls means for primary goods to be protected by the principles of justice chosen in the OP. Insofar as the family is essentially characterized by such partiality, then, we might expect that family relationships should receive some protection from parties to the OP. We may also regard

partiality as importantly involved in moral development and the development of autonomy. It is plausible, that is, that children develop a sense of justice, a capacity for a conception of the good, and the ability to make autonomous decisions because they are treated with partiality (as well as fairness) by adults who care for them. As Shoeman puts this point, “[Familial] privacy and autonomy provide the moral space within which concrete personal relationships can be formed independently of general social concerns” (p. 15, Shoeman 1980). Making such relationships answerable to general social concerns inevitably weakens the foundation of partiality in which they are rooted. Individuals, after all, cannot always be thinking of public concerns and public goods.

Rawlsian liberalism allows that there is a space of human life where individuals may freely exercise their comprehensive doctrines and states do not have cause, in general, to make individuals subject to public concern in their associations or beliefs. Similarly, it seems that Rawlsian liberalism should recognize a space of human life where individuals are free of public concerns and may exercise partiality freely. Families provide, paradigmatically, the space where individuals are able to exercise and develop their capacity to be partial. Parties to the OP, therefore, would do well to preserve the family in the basic structure of the well-ordered society and to extend to the family some robust form of autonomy and privacy. While feminists are, no doubt, cognizant of the potential dangers family autonomy and privacy involves, they should also recognize the value of partiality as a primary good and seek to preserve it in the well-ordered society.

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Notes

1. Social contract theorists of the 17th-19th centuries were rigorous in their investigations of political authority and legitimacy, and scrutinized such traditional grounds for political authority as the natural right of kings. But they did not, by and large, extend their scrutiny to the institution of the family. Locke, for example, vigorously challenged the paternal power traditionally granted to monarchs, but did not issue any similar challenge to the paternal power exercised by fathers as heads of families.
2. It appears that Plato only proposes this for the elites in his well-ordered society. See Book V, *Republic*, trans. Desmond Lee, 2d edition, Penguin Books, 2003.
3. By ‘the family’ here I mean the social institution which consists of small non-public groups of children and adults, where adults are primarily charged with the care, education and moral development of the children within their own group, where the relationships between adults and children are typically affective and close (at least over the life of the relationship), where adults devote a substantial portion of their resources to the care and development of children in their own group, and where the family is typically recognized as existing over time. The family as an institution is also characterized by autonomy and privacy. That is, adults in families are typically allowed a large measure of freedom from state interference in making decisions about their children’s lives. These decisions are also typically not open to public scrutiny.
4. Feminist criticisms are discussed in works by Jane English, John Exdell, and Susan Moller Okin. English, “Justice Between Generations,” *Philosophical Studies* 31, 1977, pp. 91-104; Exdell, “Feminism, Fundamentalism, and Legitimacy,” *Canadian Journal of Philosophy*, 3, 1994, pp. 441-463; Okin, “Justice and Gender,” *Philosophy and Public Affairs*, 16, 1987, pp. 42-72; Okin, “Reason and Feeling in Thinking About Justice,” *Ethics*, 99, 1989, pp. 229-249. See also, Karen Green, “Rawls, Women and the Priority of Liberty,” *Australian Journal of Philosophy*, 64, suppl. 1986, pp. 26-36.
5. Other feminist critiques have focused on the theory of human nature attributed to political liberalism. Feminists have criticized liberal political thinkers for being (a) overly individualistic in their accounts of persons, for (b) overly valuing such traits as independence, autonomy and self-sufficiency over cooperative virtues, for (c) illicitly assuming male actors under the guise of neutral “persons”; and for (d) not sufficiently appreciating the embodiment of persons. I leave these criticisms aside to deal with the criticisms that focus directly on the family and the public/non-public distinction.
6. I focus on Rawlsian liberalism in this paper. However, it seems any version of liberalism which endorses the family as a non-public institution which is largely exempt from state interference will be open to similar criticisms. And there are other problems regarding the family in liberalism. Egalitarian critics have argued that allowing for the family as a largely autonomous element in the basic structure of society undermines a commitment to equal opportunity, since different family positions will differentially affect individual’s opportunities and the use they may make of those opportunities. I discuss this line of criticism elsewhere in a paper (tentatively) titled: “Should the Rawlsian Keep the Family?”
7. This statement (taken from PL) differs somewhat from the statement of this principle in TJ. In

Political Liberalism, Rawls also adds the following clause: “and in this scheme the equal political liberties, and only those liberties, are to be guaranteed their fair value” (p. 5, PL). The details concerning changes to the first principle of justice are not, by and large, important for the purposes of this paper. I use the statements of the principles from PL simply because they represent Rawls’ most recent formulations.

8. The designations of the principles as LP, EOP, and DP are not included in the text of PL. I include these for ease of reference.

9. The well-ordered society is characterized by three features (paraphrasing Rawls): (a) it is a society where all citizens accept and know that others accept and publicly endorse common principles of justice; (b) its basic structure – its main political and social institutions and how they cohere as a system of cooperation – is publicly known to satisfy the principles of justice; (c) citizens have a normally effective sense of justice – they can understand and apply the principles of justice; they are motivated to comply with fair terms of cooperation; they are able to produce and evaluate claims based on public reason (p. 35, pp. 201-202, PL).

10. While pluralism of this sort certainly poses a challenge for democratic regimes, Rawls does not see such diversity as a regrettable fact of political life. Rather, he sees this diversity as “the inevitable outcome of free human reason” when it is not suppressed (pp. 36-37 and p. xvi PL). The only way a society would secure unified opinion on comprehensive doctrine would be through the use of coercive, and illegitimate, state power (p. 37, PL). So, for Rawls, reasonable pluralism is a sign of political health, not of disease.

11. See, e.g., Carole Pateman, “‘The Disorder of Women’: Women, Love, and the Sense of Justice,” *Ethics* 91 (October 1980), pp. 20-34.

12. Susan Moller Okin, “*Political Liberalism*, Justice and Gender,” *Ethics* 105 (October 1994): pp. 23-43.

13. Heidi Hartmann explains well how both converging and divergent interests typify families under capitalism in her “The Unhappy Marriage of Marxism and Feminism: Towards a More Progressive Union,” from *Women and Revolution*, ed. Linda Sargent, South End Press, 1981.

14. Rawls makes this defense against Okin at pp. 468-470, PL. See also, pp. 274-275, De Wijze 1999, pp. 358-359, Lloyd 1994.

15. A doctrine’s having illiberal views seems neither necessary or sufficient for its being unreasonable. A doctrine can hold illiberal views without acting in violation of the fair terms of social cooperation. And a doctrine need have no explicit illiberal views, and its adherents yet may act so as to undermine the fair terms of social cooperation by attempting to enforce their comprehensive doctrine on others.

16. And Rawls’ main concern with such sects at IV.6.3 is that they educate children consistent with the publicly-accepted principles of justice.

17. At some places, Rawls suggests more stringent limits on comprehensive doctrines. At PL p.

176, for example, Rawls holds that “admissible ideas of the good must respect the limits of, and serve a role within, the political conception of justice” (emphasis added). This condition appears to go further than the minimal requirement that doctrines of the good do not contradict or undermine the political conception of justice. So, a religious doctrine which endorses the moral and intellectual superiority of men over women might very well pass on the minimal condition. But this doctrine might very well fail on the more stringent condition. That is, it is very difficult to see how such a doctrine would “serve a role within” the political conception of justice. It would be profitable to work out whether weaker or stronger limits on comprehensive doctrines are better justified on Rawlsian grounds. For the purposes of this paper, I will assume the weaker requirements apply.

18. We need not think that an unreasonable doctrine is characterized by all these features. For example, reasonable doctrines may sometimes advance claims that cannot be justified on the grounds of public reason. Such violations would not automatically condemn a comprehensive theory of the good for being unreasonable. Furthermore, Rawls holds that comprehensive doctrines are somehow governed by epistemological values such as consistency and openness to evidence.

19. The authority of a religion or other non-political association is thus provisional in the well-ordered society in a way that political authority is not. All citizens are subject to the coercive authority of the state, but citizens are only subject to the authority of a given church or association by choice. Being a member of a society is not voluntary in at least two important ways: (1) one does not join “society at the age of reason, as we might join an association, but as being born into a society where we will lead a complete life” (p. 41, PL); and (2) “the government’s authority cannot be evaded except by leaving the territory over which it governs, and not always then” (p. 222, PL).

20. See De Wijze who criticizes feminists for ascribing an “immunity” interpretation of the family to Rawls. I do not think this criticism applies to Okin’s argument. The issue here is not really whether the private sphere is alleged to be completely immune from any state interference. A complete immunity view is not a reasonable view and is not held by anyone, as far as I know. Such a complete immunity view would, for example, make domestic and child abuse off limits for coercive state interference. Rather, feminist want some justification for why the family should be afforded the sorts of other protections it is afforded. That is, if the family really does have a dramatic effect on the life prospects of individuals, and if, plausibly, contemporary family forms are often unjust, how can one justify the institution of the family on liberal grounds?

21. I borrow this characterization from the way that Christian-based, conservative organizations such as Focus On The Family describe ideal marriage and family relations. (See www.focusonfamily.org.)

22. In TJ Rawls seems to only recognize the heterosexual, monogamous family (p. 7, TJ). In PL, he extends consideration to alternative family forms. There Rawls claims: “[N]o particular form of the family (monogamous, heterosexual, or otherwise) is required by a political conception of justice as long as the family is arranged to fulfill [its] basic tasks effectively and doesn’t run afoul of other political values” (p. 467, PL). It is an interesting question if Rawlsian liberalism would allow for polygamous families.

23. It would be open to the feminist, of course, to give up some of the central commitments of liberalism such as state neutrality regarding comprehensive doctrines. But in this paper I assume

that we are working within a Rawlsian framework.

24. One may make a comparison here with cases of domestic violence. We know that even if women are able, in some sense, to leave abusive marriages, they often do not do so. Economic pressures often serve to keep women in such marriages. But we also know that early socialization and childhood abuse can play a significant role in undermining the ability women have to leave abusive relationships. Such cases raise important questions about agency and autonomy. It may be that the Rawlsian does not have the resources to adequately address such questions.

25. Children, presumably, will be subject to special protections on these grounds. Rawls also mentions those who are subject to a temporary or permanent illness or disability (p. 20, 21 PL; pp. 248-249, TJ).

26. Rawls writes: “Someone who has not developed and cannot exercise the moral powers to the minimum requisite degree cannot be a normal and fully cooperating member of society over a complete life” (p. 74, PL).

27. In some religions and cultures, it is common for girls to be married when they are quite young. Feminists (and others) might plausibly be concerned that such marriages are not fully voluntary if these girls have not yet reached an age where their moral powers are fully developed. It seems that the well-ordered society might legitimately place certain age restrictions on marriage, at least where marriage is understood as a civilly-recognized quasi-contractual arrangement which generates certain rights and responsibilities.

28. The Rawlsian response, I believe, still leaves it open that feminists can interrogate agency and autonomy. For example, feminists might still be concerned to explore whether there are measures which could be taken to encourage the development of moral capabilities and autonomy beyond the minimum required to count as a free and equal citizen. As long as such measures respect the political conception of justice, the Rawlsian need not object to them.

29. However, Rawls also recognizes the possibility of families which lack love, trust and fairness. He concludes, “Presumably, moral development fails to take place to the extent that these conditions are absent” (p. 466, TJ). It is, therefore, an important empirical issue whether most families are characterized by love, trust and fairness. If not, or if the family structure itself is inimical to these relationships, then the moral powers will not be adequately developed.

30. See, e.g., Gupta, Sanjiv, “The Effects of Transitions in Marital Status on Men’s Performance of Housework,” *Journal of Marriage and the Family*, vol. 61, August 1999, pp. 700-711; Hochschild, Arlie, and Anne Machung, *The Second Shift*, New York: Viking, 1989 (revised edition, Penguin Books, 2003); Shelton, B. A., *Women, Men and Time: Gender Differences in Paid Work, Housework and Leisure*, Westport, CT: Greenwood Press, 1992.

31. In families where women do not work and are stay-at-home-parents, the gap is even more significant. In these families, generally, wives are paid nothing for their labor, while husbands are compensated for their out-of-home work.

32. See for example the U.S. Census Bureau’s Special Report entitled, “Evidence From Census

2000 About Earnings by Detailed Occupation,” released May 2004, the U.S. Department of Labor study, “Women’s Earnings: An Overview,” Mary Bowler, Monthly Labor Review, December 1999, and the U.S. Department of Labor study, “How Does Gender Play a Role in the Earnings Gap?,” Stephanie Boraas and William Rodgers III, Monthly Labor Review, March 2003. See also Francine Blau and Lawrence M. Kahn, “Gender Differences in Pay,” *Economic Perspectives*, 14, Fall 2000, pp. 75-99.

33. This fact also helps explain the “feminization of poverty”. That is, women and children are more likely than men to live in poverty. U. S. Census Bureau, “Women and Men in the United States: March 2002,” issued March 2003.

34. We thus cannot justify governmental interference with the family to rectify the gender-related economic disparities, it seems. Because of the lexical ordering of the two principles of justice, economic improvements cannot be traded off against any basic right guaranteed by the first principle (such as the freedom of association). So, the state could not (however fancifully) mandate that domestic labor be equally shared, since this might plausibly be regarded as interfering with the rights of individuals to choose families where domestic labor is not equally shared.

35. We must realize that there may not be a clear bright line between childhood non-autonomy and adult autonomy. For one, different individuals may develop their capacities for autonomous decision-making at different ages. For two, it is plausible that autonomous decision-making develops in degrees. For example, children at a certain point may be capable of making autonomous decisions about matters which do not involve long-term projection (which clothes to wear on a particular day, for example). But autonomous decision-making which involves potentially life-altering matters or long-term planning may not be developed until much later.

36. These are families in which both wives and husbands work outside the home for pay, but in which the wives also take on at least twice as much domestic work compared with their husbands. Okin calls these “drudge wife households” (p. 36, Okin 1994).

37. As S. A. Lloyd and De Wijze point out, governmental regulation of domestic labor seems overly intrusive (p. 279, De Wijze 2000; pp. 369, Lloyd 1994).

38. The sense of justice, for Rawls, involves at least two distinct capacities: (a) “the capacity to understand, to apply, and to act from the public conception of justice which characterizes the fair terms of social cooperation”; and (b) “the willingness, if not the desires, to act in relation to others on terms that they also can publicly endorse” (p. 19, PL). The capacity to for a conception of the good is: “the capacity to form, to revise, and rationally to pursue a conception of one’s own rational advantage or good” (p. 19, PL). This capacity involves the ability to have a “conception of what is valuable in human life” and the ability to form “a more or less determinate scheme of final ends,...attachments,...and loyalties” (p. 19, PL).

39. See, e.g., p. 277, De Wijze 2000; pp. 364-365, Lloyd 1994.

40. Okin endorses a suggestion in this spirit when she proposes that the state require that each married partner be equally entitled to any earnings of either spouse. This would, it is suggested, allow wives responsible for the bulk of unpaid work to ‘earn’ a comparable income to their

husbands and thus reduce the wage gap between men and women (Okin, *Justice, Gender, and the Family*, Basic Books, New York, 1989.) Robert Card argues against this proposal in his paper, "Gender, Justice Within the Family, and The Commitments of Rawlsian Liberalism," *Public Affairs Quarterly*, 15:2, April 2001, pp. 155-171.

41. I draw here on the account of family autonomy and family privacy provided by Shoeman 1980. No doubt, though, my characterization of these features could be made sharper.

42. See, for example, the 1991 American Association of University Women study entitled, "Shortchanging Girls, Shortchanging the Future" and Peggy Orenstein, *SchoolGirls: Young Women, Self-Esteem, and the Confidence Gap*, Anchor Publishers, 1995.

43. Ron Mallon, "Political Liberalism, Cultural Membership, and the Family," *Social Theory and Practice* 25:2 (Summer 1999), pp. 271-297. Will Kymlicka endorses the "starting points" view in his *Liberalism, Community and Culture*, Oxford, New York, 1989.

44. I disagree with Mallon on two key points: (a) I do not think that strong cultural membership is necessary for having a starting conception of the good; (b) I do not think that families are the only way that comprehensive doctrines can be transmitted, other non-public associations may do just as well. I develop these points elsewhere. I do agree, however, that some starting points are necessary in order for children to develop morally. And I agree that public institutions are disbarred, on Rawlsian grounds, from transmitting comprehensive doctrines.