

The London School of Economics and Political Science

Justice, Children and Family

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Abstract

Taking as a starting point the assumption that justice is the first virtue of the family, my main aim in this dissertation is to offer an account of what justice requires of parents. Grappling with this issue, however, sheds some light on related questions that are wider in scope: How should we think about justice in general? What is the distinctive value of the family? What would a society of just families look like? In answering these questions, the following thesis is advanced: Demands of justice are best understood contextually. They arise from the characteristics of the specific relationship in the context within which they are meant to apply. An account of justice in the family should thus appeal to the parent–child relationship itself. This is an intimate fiduciary relationship that normally constitutes the primary site of upbringing. Yet what makes it distinctively valuable is its element of identity, i.e., a sense of interconnectedness and continuity generated through the transmission of beliefs, practices and more idiosyncratic attributes from parent to child. Corresponding to this understanding of the parent–child relationship, justice requires parents to provide their children with the conditions to achieve a set of functionings up to the level that allows them to lead a decent life in terms of the parents’ social and cultural context. As this account of justice in the family is not strictly political, it gives rise to a complex interplay along the axis of citizens–parents–children, displaying formulae of both integration and separation of family and state. A society of perfectly just families might not be perfectly just as a whole. Yet it may be interpreted as particularly liberal; characterized by multiplication and separation of authorities, reflecting rather than resolving the tensions between the individual and society and between different individuals and groups within society.

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And it is a characteristic of man that he alone has any sense of good and evil, of just and unjust, and the like, and the association of living beings who have this sense makes a family and a state.

(Aristotle)¹

¹ Aristotle, *The Politics*, ed. Stephen Everson (Cambridge: Cambridge University Press, 1996), 13.

Introduction

Justice, Children and Family

In the little world in which children have their existence whosoever brings them up, there is nothing so finely perceived and so finely felt as injustice.

(Charles Dickens)¹

It has been twenty-five years since Susan Okin raised the challenge of gender against theories of justice. She argued that since theories of justice are centrally concerned with which “initial or acquired characteristics or positions ... legitimize differential treatment of persons by social institutions,” and with the effect that beginnings should have on outcomes, theorists cannot allow themselves to ignore “the division of humanity into two sexes” and, in particular, the sexual division of labour within the family.² Yet the aforementioned issues also highlight another division as having crucial relevance: namely, that between adults and children and, in particular, the relations between parents and children in the family. Children are treated differently from adults and they are treated differently by different adults, most notably by their parents. Moreover, questions regarding the parent–child relationship obviously have direct bearings on how beginnings affect outcomes.

Nonetheless, theories of justice often approach the parent–child relationship with considerable ambivalence. Families are conceived as standing in the way of justice – as an obstacle for achieving it or as one of the boundaries of its domain. But at the same time theorists often turn to situations in family life to illustrate certain intuitions regarding issues of justice, and thus implicitly demonstrate the relevance of justice to the internal life of families.

¹ Charles Dickens, *Great Expectations* (London: Penguin, 2003), 63.

² Susan Moller Okin, “Justice and Gender,” *Philosophy and Public Affairs* 16 (1987): 42-72, at 42. This challenge was further pursued and developed in her *Justice, Gender, and the Family* (New York: Basic Books, 1989).

Those who conceive the family as in some way obstructing justice, portray families as forming a private sphere governed by natural sentiments of kinship and love. Accordingly, the internal life of families need not be scrutinized from the perspective of justice since one assumes each member is motivated by altruistic feelings of care towards the others.³ Moreover, maintaining the characteristic nature of the family does not seem to go hand in hand with a full implementation of the principles of justice at the social and political levels. For example, allowing parents to confer advantage on their children as a way of expressing their love would violate the principle of fair equality of opportunity, according to which all children should enjoy an equal start in life, regardless of their family background.⁴ In response we can settle for less than full implementation of the principles of fairness and equality to allow room for parental partiality. Or, we can opt for narrowing the scope of influence parents have on their children's life prospects, in order to promote social justice. Either way, when looking through this lens, families and justice seem to pull in opposite directions.⁵

But the family is also in itself a distributive sphere which profoundly affects its members' lives. Families not only share love and kinship but are also required to share money, assets, opportunities, time, attention, and so on. It seems plausible to hold then that as the goods to be distributed are limited, and competing demands arise for their use, justice is also relevant to the internal life of the family. Accordingly, examples of family life are often invoked in debates over justice. The examples usually aim at illustrating certain principles at the micro level of the family, en route to adopting them at the macro level of politics. Families are portrayed there as small-scale states where parents (paralleling a government) apply principles of justice in ruling over their children (the citizens). Thus, Thomas Nagel famously argues for the value of equality by

³ See, for example, John Rawls, *A Theory of Justice*, revised edition (Cambridge, MA: Harvard University Press, 1999), 111.

⁴ See, most notably, James S. Fishkin, *Justice, Equal Opportunity, and the Family* (New Haven and London: Yale University Press, 1983).

⁵ For attempts to resolve this tension between social justice and the family, see Colin M. Macleod, "Liberal Equality and the Affective Family," in David Archard and Colin M. Macleod (eds.), *The Moral and Political Status of Children* (Oxford: Oxford University Press, 2002); Harry Brighouse and Adam Swift, "Legitimate Parental Partiality," *Philosophy and Public Affairs* 37 (2009): 43-80.

considering the dilemma of parents wondering whether to move to the city to provide better medical treatment for their handicapped child, or to move to the suburbs where their healthy child could flourish.⁶ What this construction overlooks, however, is that in real-life families parents are not mere arbitrators between their children's interests, nor a neutral mechanism for allocating resources. They have interests of their own, some of which are interests qua parents and many others that are unrelated to their children. Inasmuch as these are not entirely congruent with the children's interests, principles of justice may also hold *between* parents and children.

My main aim in this dissertation is to offer an account of what justice requires of parents, as I believe justice is a fundamental virtue of parenting. Admittedly, however, justice is not usually the first thing that comes to our mind when we think of parenting and the link between justice and the parent-child relationship may still seem quite weak at this point. In the rest of this Introduction I elaborate the case for the relevance of justice to the parent-child relationship (Section 1); make some terminological points (Section 2); and provide an outline of the thesis (Section 3).

1. What's justice got to do with it?

One major source of scepticism about the relevance of justice to the parent-child relationship is the sentimentalist view of the family: Since the family is a sphere of love, it is not (primarily) a sphere of justice; the love that exists between parents and children makes issues of justice between them redundant. There are two ways to respond to this scepticism. The first is to undermine the view of the family as a sphere of love and

⁶ Thomas Nagel, "Equality," in his *Mortal Questions* (Cambridge: Cambridge University Press, 1979), 123-4; and also Derek Parfit, "Equality and Priority," *Ratio* 10 (1997): 202-21, which builds on Nagel's case. Similarly-structured dilemmas are found in Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 167n; Brian Barry, *Justice as Impartiality* (Oxford: Clarendon Press, 1995), 18-19; Ronald Dworkin, *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000), 12-13.

thereby reaffirm its status as a sphere of justice; the second is to dispute the either/or relation between justice and love.

The first line of response is forcefully expressed by Martha Nussbaum:

Love and care do exist in families. So too do domestic violence, marital rape, child sexual abuse, undernutrition of girls, unequal health care, unequal educational opportunities, and countless more intangible violations of dignity and equal personhood... Family, then, can mean love; it can also mean neglect, abuse, and degradation.⁷

This holds true for a strikingly large number of families. For example, a UK-wide study of child maltreatment found that, during their childhood, one in four (24.5%) 18–24 year olds had one or more experiences of physical violence, sexual or emotional abuse, or neglect by a parent or guardian. One in seven (14.5%) had experienced severe maltreatment by a parent or guardian.⁸ In the US more than four children a day die from abuse and neglect; 80% of these fatalities are caused by parents.⁹ Children are the most vulnerable members of society in general, but they are specifically and especially vulnerable to their parents' conduct. It is therefore critical that we become more aware of the facts concerning the real-life experiences of children in their families if we are to protect the vulnerable in society; challenging the sentimentalist view of the family is an important step in that direction.

Notice however that as it stands this line of argument might give the impression that justice is only relevant to dysfunctional families and thereby imply that the family is a sphere of love *rather than* justice when all goes well. But we can go beyond this and deepen the relevance of justice to the parent–child relationship by questioning the

⁷ Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000), 243-4. See also Sara Ruddick, "Injustice in Families: Assault and Domination," in Virginia Held (ed.), *Justice and Care: Essential Readings in Feminist Ethics* (Boulder: Westview, 1995), which construes the relevance of justice to family life through the wrongs of family assault and domination.

⁸ Lorraine Radford *et al.*, *Child Abuse and Neglect in the UK Today* (London: National Society for the Prevention of Cruelty to Children, 2011), 40-1.

⁹ US Department of Health and Human Services, *Child Maltreatment 2010*, 58-60 (www.acf.hhs.gov/programs/cb/pubs/cm10/index.htm).

either/or relation between justice and love. It is wrong to think that the relevance of justice indicates – or necessitates – a shortage of love. Where competing demands arise out of different loving relationships, as is often the case in families, love alone does not tell us how we should respond. As Henry Sidgwick claims,

...when we come to compare the obligations arising out of different affectionate relations, and to consider the right allotment of love and kind services, the notion of justice becomes applicable. In order to arrange this allotment properly we have to inquire what is just.¹⁰

Thus, a parent might be concerned about justice *because* of her love for her children and her desire to respond adequately to their competing needs. But within a single loving relationship, too, a parent may still be concerned with justice in wanting to ensure his child is being provided with *at least* what justice requires. We tend to assume that if parents love their children they will go far beyond the demands of justice for them, but many parents may struggle to meet even those demands and the fact that they manage, with great effort, to do so may be a sign of their love.

Most importantly, however, love does not make justice redundant since the former leaves undetermined the obligations parents have to their children. Parental love (rather than duty) may serve as the *motivation* to meet those obligations and go beyond them, but it is justice which determines their content and thus sets *standards* for parenting.¹¹

It is easy to say broadly that [a parent] ought to promote his children's happiness by all means in his power: and no doubt it is natural for a good parent to find his own best happiness in his children's... still it seems unreasonable that he should

¹⁰ Henry Sidgwick, *The Methods of Ethics*, seventh edition (Indianapolis: Hackett, 1981), 268. See also Rawls, *Theory*, 166: "Now love clearly has among its main elements the desire to advance the other person's good as this person's rational self-love would require... The difficulty is that the love of several persons is thrown into confusion once the claims of these persons conflict... It is quite pointless to say that one is to judge the situation as benevolence dictates. This assumes that we are wrongly swayed by self-concern. Our problem lies elsewhere. Benevolence is at sea as long as its many loves are in opposition in the persons of its many objects."

¹¹ The distinction between motivation and standard is taken from the discussion of justice and love in Will Kymlicka, *Liberalism, Community and Culture* (Oxford: Clarendon Press, 1989), 122-5.

purchase a small increase of their happiness by a great sacrifice of his own: and moreover there are other worthy and noble ends which may (and do) come into competition with this... yet what clear and accepted principle can be stated for determining the true mean?¹²

It is not enough simply to expect parents to do their best for their children. As Sidgwick suggests, 'doing their best' may at times be too demanding. At other times, however, it might not be enough, still falling short of the required standards. We may also ask *how* parents should advance their children's good. There are many ways in which parents can benefit their children; yet we may not want to lose sight of some specific provisions they are required to make for them. More fundamentally, there is the matter of how the children's good should be determined. As Rawls points out, "love and benevolence are second-order notions: they seek to further the good of beloved individuals that is already given."¹³ Is an account of the children's good to be given by reference to their parents' beliefs, cultural and social norms, or perhaps some universal standards? And finally there is the issue of what to do if parents do not meet their obligations to their children. Does it call for state action and if so, of what sort? As much as the relevance of justice does not indicate shortage of love, assuming that parents love their children does not make these issues redundant. Hence we may enquire into these matters while granting that many parents love their children dearly. An account of parental justice is not an assault on parental love.

Further explanation is in order as to why this requires an account of *justice*. Here we may follow the strategy of pointing out "overlapping characteristics that allow us to classify activities that [are] different in many other respects under the same heading."¹⁴ In this manner, different judgments and principles are characteristically associated with distributive justice when they are concerned with assigning rights and duties and allocating goods and burdens non-arbitrarily. Or, in Rawls's terms, "the concept of justice, applied to an institution, means... that the institution makes no arbitrary

¹² Sidgwick, *Methods of Ethics*, 249.

¹³ Rawls, *Theory*, 167.

¹⁴ David Miller, "Two Ways to Think About Justice," *Politics, Philosophy & Economics* 1 (2002): 5-28, at 19.

distinctions between persons in assigning basic rights and duties, and that its rules establish a proper balance between competing claims.”¹⁵ Accordingly, this dissertation offers an interpretation of what this implies for the family as the primary site of upbringing; or, in other words, an account of justice elaborating the standards for determining the rights and duties of parents with respect to their children and the proper balance between their competing claims.¹⁶

The account offered in this essay also shares Rawls’s view of the primacy of justice as a virtue of social institutions:

Justice is the first virtue of social institutions, as truth is of systems of thought. A theory however elegant and economical must be rejected or revised if it is untrue; likewise laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust... The only thing that permits us to acquiesce in an erroneous theory is the lack of a better one; analogously, an injustice is tolerable only when it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice are uncompromising.¹⁷

Susan Okin has carried this claim further and argued that “it is essential that [affection, generosity or other virtues morally superior to justice], within the family as well as in society at large, be underwritten by a foundation of justice.”¹⁸ Justice is primary “even in social groupings in which aims are largely common and affection frequently prevails,” in the sense that it is the most fundamental moral virtue.¹⁹ This seems to hold true specifically with respect to the parent–child relationship within the family.²⁰ For instance, in cases where parents are loving but neglectful we do not normally think that the love of the parents may serve as a sufficient reason for allowing child neglect to

¹⁵ John Rawls, *Political Liberalism*, paperback edition (New York: Columbia University Press, 1996), 14n.

¹⁶ This echoes Rawls’s distinction between concept and conceptions of justice; the latter include, besides the meaning of the term, the principles and criteria required to apply it. See *ibid.*, and *Theory*, 5, 8-9. Notice however that at the outset it is an open question whether justice in the family requires the development of a separate conception of justice specific for this subject matter or, alternatively, may draw upon a wider conception.

¹⁷ Rawls, *Theory*, 3-4.

¹⁸ Okin, *Justice, Gender, and the Family*, 29.

¹⁹ *Ibid.*

²⁰ For *why* justice is primary in the parent–child relationship, see the discussion of the parallel case argument in Chapter 2, Section 4.

continue. Paraphrasing Rawls we can claim that parenting, no matter how loving, must be reformed or abolished if it is unjust.²¹ Accordingly, an account of what justice requires of parents also marks the scope of legitimate parenting – one not calling for reform or abolishment. To be sure, within the scope of legitimate parenting there might still be instances of morally dubious conduct such as lying or promise-breaking. The concern in this dissertation, however, is with standards for assessing parenting as a whole.

Notwithstanding the above remarks, the proof of the pudding is in the eating. Our normative expectations from parents are to some extent conflicting and uncertain and I believe that applying theories of justice to the case of parenthood will prove constructive in ordering and explaining them. I also believe it will shed some new light on the theories discussed and thereby further our understanding of justice.

2. Some points about terminology

Before turning to the thesis itself, some terminological matters need to be addressed. First, by ‘parents’ I refer to those adults who have a certain kind of *interpersonal relationship* with a child – that which involves the *activity* of parenting. I shall provide an account of what exactly this amounts to in due course but for now suffice it to say that the relationship has to do with the upbringing of that child. This interpersonal relationship can be distinguished from biological and legal notions of parenthood.²² The adults who actually parent the child may not be the ones who caused the child to come into existence (the biological parents) or the ones who are formally recognized by the law as the child’s parents (the legal parents). Although I will have something to say about the significance of biological parenthood and about state action in relation to

²¹ As I argue in Chapter 5 this claim is addressed, first and foremost, to the parents themselves, not to the state.

²² My distinction here is similar to that in David Archard, “What’s Blood Got to Do With It? The Significance of Natural Parenthood,” *Res Publica* 1 (1995): 91-106, at 92-3.

parenting, my primary concern is not with biological or legal parenthood as such. It is rather with the parenting relationship and with what justice requires of those who parent. In what follows, 'parent' may thus refer to a biological grandparent, a legal parent's cohabiting partner or any other non-biological and/or non-legal parent.

The terms 'parent-child relationship' and 'family' are used quite interchangeably throughout the thesis. But I wish to remain agnostic as to whether the notion of 'family' may also be applicable to some associations of adults without children (e.g. cohabiting couples) and if so, by virtue of which of their characteristics. Issues concerning family relations between adults are simply bracketed, including those related to parenting (most notably the distribution of its burdens between the parents). This is not to suggest that these issues are of less importance. Quite on the contrary, they are too important to be addressed secondarily in a thesis whose particular contribution lies elsewhere.²³

Moreover, 'family' often stands for a particular family structure – one that consists of a married heterosexual couple and their biological children. Yet this is only one among a wide variety of existing and possible structures. None of what is argued for in the thesis is inconsistent with structures other than the heterosexual-biological one, such as adoptive parent-child relationships, families established by gay people, single-parent families, or families with more than two adults. This does not mean, however, that the label 'family' can be attached to every possible child-raising structure. If children cannot experience the distinctive features of the parent-child relationship with too many adults around – a claim that is not argued for in the thesis but which I believe to be true – then this restricts, albeit in a somewhat indeterminate way, the number of potential parents each child can have.

Acknowledging the diversity in family structures leads me to refrain from systematically employing gendered language. I talk about 'parents' and 'children' in the

²³ There is, of course, a vast feminist literature dealing with these issues, which includes Carole Pateman, *The Sexual Contract* (Cambridge: Polity Press, 1988); Okin, *Justice, Gender, and the Family*; Eva Feder Kittay, *Love's Labor: Essays on Women, Equality and Dependency* (New York: Routledge, 1999); Martha C. Nussbaum, *Sex and Social Justice* (New York: Oxford University Press, 1999), and *Women and Human Development*.

plural, but also about individual parents and children; about mothers as well as fathers, their sons and daughters. Some might interpret this as adopting “false gender neutrality” which ignores the fact “that the sexes have had very different histories, very different assigned social roles and ‘natures’ and very different degrees of access to power and opportunity.”²⁴ This is certainly not my intention; it is rather to suggest that what justice requires of parents applies also to non-traditional family structures and that within the more traditional structures the obligations are of fathers to no less an extent than they are of mothers.²⁵ Where gender issues are directly discussed, I do employ gendered language to reflect the facts of the matter.

3. The thesis

The work’s starting assumption is the claim that justice is the first virtue of the family. Hence the title, echoing Susan Okin’s *Justice, Gender, and the Family* where this claim was most forcefully defended. Given this assumption, the primary question addressed in this work is the following: What does justice require of parents? What do parents owe their children as a matter of justice? Through grappling with this issue, however, the work sheds some light on related questions that are wider in scope: How should we think about justice in general? What is the distinctive value of families? What would a society of just families look like? The thesis advanced as an answer to these questions is the following.

Demands of justice are best understood contextually. They stem from the characteristics of the specific mode of relationship in the context in which they are meant to apply. This implies that an account of what parents owe their children as a

²⁴ Okin, *Justice, Gender, and the Family*, 10.

²⁵ It is interesting to note that some aspects of Okin’s *critique* of the heterosexual-biological family seem to *affirm* it. See Will Kymlicka, “Rethinking the Family,” *Philosophy and Public Affairs* 20 (1991): 77-97; Joshua Cohen, “Okin on Justice, Gender, and the Family,” *Canadian Journal of Philosophy* 22 (1992): 263-86, at 280-1.

matter of justice should appeal to the parent–child relationship itself. The relationship is an intimate fiduciary relationship which normally constitutes the primary site of upbringing. Yet what makes it distinctive and distinctively valuable is its element of identity, that is, a sense of interconnectedness and continuity generated through the transmission of beliefs, practices and more idiosyncratic features from parent to child. Corresponding to this understanding of the parent–child relationship, what justice requires is best understood as follows. Parents are required to provide their children with the conditions to achieve a set of functionings up to the level that allows them to lead a decent life in terms of the parents’ social and cultural context. The principle of family justice thus formulated gives rise to a complex interplay along the axis of citizens–parents–children, displaying formulae of both integration and separation of family and state. A society of perfectly just families might not be perfectly just as a whole. Yet it may be interpreted as particularly liberal; characterized by a multiplication and separation of authorities, reflecting rather than resolving the tensions between the individual and society and between different individuals and groups within society.

To make it more explicit, the account offered here is at odds with two prevalent approaches to issues of justice concerning the family. In contrast to a child-centred approach, the account is not recipient-based. It rejects the idea of starting with a notion of the rights or entitlements children have independently of their relationship with their parents, and offers instead a *relational* account of justice. What justice requires is to be captured not through the characteristics of children or, more generally, human beings as such, but through the characteristics of the relationship in which they find themselves. My account of justice in the family is relational but *not political* and in this it contrasts with the other predominant approach holding justice to be a value which is essentially political. To be sure, the family is part of the basic institutional structure of society and children are future citizens. However, since the parent–child relationship itself is not strictly political, justice in the family is not to be captured in political terms. Here is also where my fundamental disagreement with Okin lies. While conceding that the family sphere is not identical with ‘the political,’ she holds that we have good enough reasons

to treat it *as* political. My account of justice in the family rejects this view and thus departs from Okin's 'comprehensive' liberalism.

The argument for this thesis is presented in five chapters. It begins by evaluating the two prevalent approaches mentioned above, not only to expose their flaws but also to identify the insights that the account to be articulated should take on board. Chapter 1 scrutinizes the child-centred approach according to which we need to start from children's abstract entitlements and account for what justice requires of parents in these terms. The conclusion drawn is that this approach is correct in emphasizing the separateness of persons and in holding the family sphere to be only partially private. Nonetheless, the approach fails to provide a complete account of justice in the family by not taking the parent-child relationship and its social context seriously enough, morally speaking.

Following from this, Chapter 2 examines, through the prism of John Rawls's theory, the bearings that a political conception of justice may have on our question. It concludes that attempts – the most notable among which is Okin's – to account for justice in the family exclusively in political terms are unsuccessful. Those arguments, however, prove to be helpful in setting the path for further enquiry. The chapter suggests that before formulating an account of justice we need to articulate the distinctive features of the context to which it is meant to apply. It also lays the ground for the complex interplay between family and state pursued in the last stage of the argument.

Critically engaging with these two approaches leads to the contextualist approach from within which subsequent chapters develop the positive account of justice in the family. Chapter 3 argues for a certain interpretation of the parent-child relationship, according to which it is an intimate fiduciary relationship distinctively characterized by a sense of interconnectedness and continuity between the identities of parent and child. Chapter 4 builds on this interpretation to argue for a sufficiency principle of justice applying to the parent-child context. It draws on the capability approach to suggest 'conditions for functioning' as the appropriate metric and defends a threshold

dependent on the parents' social context which is meant to exhaust what justice requires of parents. An appendix to Chapter 4 supplements the argument by addressing the case of unfavourable natural circumstances and showing why the principle does not entail that every fall below the threshold is an injustice.

Chapter 5 examines the implications this principle has on the interplay between family and polity and develops the idea that the family as a site of upbringing contains formulae of both integration with and separation from the state. In light of this the chapter elucidates the circumstances in which a conflict between the perspectives of family and polity is likely to arise, leading inevitably to some compromise of justice. After addressing the bearings social injustice may have on family justice, the chapter ends with a discussion of the policy implications that flow from this account.

The thesis concludes by trying to deepen the link between the family as the primary site of upbringing and my account of justice in the family by reflecting on models of upbringing alternative to the family. It ends with the suggestion that there is something particularly liberal in the family model of upbringing and its relation to the polity.

Chapter 1

In the Child's Best Interest?

We are born weak, we need strength; we are born totally unprovided, we need aid; we are born stupid, we need judgment.

Prior to the calling of his parents is nature's call to human life... We must, then, generalize our views and consider in our pupil abstract man, man exposed to all the accidents of human life.

(Jean-Jacques Rousseau)¹

1. Introduction

One may argue from the outset that asking, specifically, what justice requires of parents, mistakes the solution for the problem: it takes the parent–child relationship as given and then explores the obligations attached to it. This is wrong – so the argument goes – because the obligations parents have to their children are not basic: they can be further explained in terms of obligations independent of that relationship. In other words, the *special* obligations of parents are not *genuinely* special because they can be shown to derive from *general* moral considerations.² This is the reductionist view of parental obligations.³ This chapter is concerned with a version (or group of versions) of this view,

¹ Jean-Jacques Rousseau, *Emile or On Education*, trans. and ed. Allan Bloom (New York: Basic Books, 1979), 38, 41-2.

² The distinction between special and general obligations is introduced in H. L. A. Hart, "Are There Any Natural Rights?" *Philosophical Review* 64 (1955): 175-91, at 183: "When rights arise out of special transactions between individuals or out of some special relationships in which they stand to each other, both the persons who have the right and those who have the corresponding obligation are limited to the parties to the special transaction or relationship. I call such rights special rights to distinguish them from those moral rights which are thought of as rights against (i.e., as imposing obligations upon) everyone." Throughout this chapter I use 'duties', 'obligations' and 'responsibilities' interchangeably following the terminology of the texts referred to.

³ On the reductionist view more generally, see Samuel Scheffler, "Relationships and Responsibilities," *Philosophy and Public Affairs* 26 (1997): 189-209; "Families, Nations, and Strangers," in *Boundaries and Allegiances: Problems of Justice and Responsibility in Liberal Thought* (Oxford: Oxford University Press, 2001); Diane Jeske, "Special Obligations," in Edward N. Zalta (ed.), *Stanford Encyclopedia of Philosophy*, Fall 2008 edition (<http://plato.stanford.edu/archives/fall2008/entries/special-obligations>); and also Niko

which underlies quite a prevalent approach – in theory and practice – to issues of justice concerning the family. This view holds that since children are separate human beings with an independent moral standing that underlies a set of moral entitlements they have, at the basic moral level we need to ask what children are entitled to, abstracted from their actual special relationships and attachments. What justice requires of parents can, in turn, be explained in terms of those independent entitlements. Thus, the claims of children are prior to the parents' obligations or, in a familiar legal jargon, the parent-child relationship is to serve the child's best interest. Call this the child-centred approach to justice in the family or, in short, the *child-centred approach*.

My main aim in this chapter is to demonstrate the serious limitations of the child-centred approach in offering a complete account of what justice requires of parents. This is intended to provide a stimulus to probe beyond child-centred considerations and take the child's *relational context*⁴ more seriously, morally speaking. Yet I do not deny that child-centred considerations play a crucial role in such an account. Nor do I take my case against the child-centred approach to be conclusive against the reductionist view. It leaves open the possibility that at the most basic level there are some general moral considerations that account for the obligations of justice that parents have to their children.

The argument of the chapter is as follows. In the subsequent section I sketch the basic child-centred picture that follows from Locke. In Section 3 I reject two objections against it, namely that it wrongly emphasizes the separateness of persons and opens the way for violating the privacy of the family. I then highlight more fundamental problems with the approach in Sections 4-6: It has difficulty explaining why the primary responsibility to meet children's independent justice claims falls to their parents; it does not provide us with an adequate set of parents' obligations; and it presupposes the

Kolodny, "Which Relationships Justify Partiality? The Case of Parents and Children," *Philosophy and Public Affairs* 38 (2010): 37-75.

⁴ By relational context I refer to the actual relationships the child has and to the other parties in those relationships.

parent–child relationship rather than abstracting from it, as it aims to do. Section 7 concludes the chapter.

2. The Lockean picture

John Locke – who may be regarded as the forefather of the child-centred approach – offers us the following picture. As it happens, human beings are born with dramatically underdeveloped physical and mental capacities, “weak and helpless, without knowledge or understanding.”⁵ Because of this, children cannot take care of themselves and so they require someone else to “preserve, nourish, and educate” them. It is from the “defects of this imperfect state”⁶ of childhood that parents’ duties emerge and, in turn, it is the discharge of these duties by the parents that is the source of their authority over their children.

[T]his power so little belongs to the father by any peculiar right of nature, but only as he is guardian of his children, that when he quits his care of them, he loses his power over them, which goes along with their nourishment and education to which it is inseparably annexed and it belongs as much to the foster-father of an exposed child as to the natural father of another.⁷

For Locke, parents are guardians and as in other guardianships it is the principal’s, i.e. the child’s, interests that matter. The guardianship is instrumental to furthering the principal’s interests while the guardian’s own interests play no justificatory role. It lasts as long as it serves the principal’s interest and ceases when this is no longer the case. Parents, Locke tells us, are “instruments in [God’s] great design of continuing the race of

⁵ John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), 305.

⁶ *Ibid.*

⁷ *Ibid.*, 310.

mankind” and it is as such that they are under “an obligation to nourish, preserve and bring up their off-spring.”⁸

This child-centred theme of parents-as-fiduciaries (-guardians, -trustees, or -stewards) is dominant in contemporary philosophical discussions of the parent–child relationship.⁹ Brennan and Noggle, for example, write that

Parents’ complex moral status involves two main factors. The most important is the rights of the children themselves, together with the fact that children are typically incapable of fully exercising and protecting these rights. Children need help in asserting their rights and it is the role of the parent-as-steward to give them this help. A second factor from which the moral status of parents derives is the needs of the child... Because children are not yet mature, they often do not possess the capabilities necessary to effectively satisfy all their own needs. The role of the parent is to both see that these needs are met, and to help the child develop the capabilities for satisfying her own needs in the future.¹⁰

The main difference between this account and Locke’s is that children are here described as having a set of moral *rights* that parents have a general duty to respect (by not violating them) and a *special* duty to protect (by preventing others from violating them). The set includes the rights children have “simply in virtue of being persons,” such as the rights to life and freedom from deliberate harm.¹¹ An additional factor is the child’s needs, which we already saw in Locke, and which include needs such as nourishment, education and special care. We may also frame these needs in terms of rights, thereby declaring that children have a right to education or a right to be cared

⁸ Ibid., 311.

⁹ This includes Richard Arneson and Ian Shapiro, “Democratic Autonomy and Religious Freedom: A Critique of *Wisconsin v. Yoder*,” in Ian Shapiro and Russell Hardin (eds.), *Political Order: NOMOS XXXVIII* (New York: New York University Press, 1996); Jeffrey Blustein, *Parents and Children: The Ethics of the Family* (New York: Oxford University Press, 1982); Samantha Brennan and Robert Noggle, “The Moral Status of Children: Children’s Rights, Parents’ Rights, and Family Justice,” *Social Theory and Practice* 23 (1997): 1-26; Amy Gutmann, “Children, Paternalism, and Education: A Liberal Argument,” *Philosophy and Public Affairs* 9 (1980): 338-58; Robert Noggle, “Special Agents: Children’s Autonomy and Parental Authority,” in David Archard and Colin M. Macleod (eds.), *The Moral and Political Status of Children* (Oxford: Oxford University Press, 2002); Ian Shapiro, *Democratic Justice* (New Haven and London: Yale University Press, 1999); and Peter Vallentyne, “Rights and Duties of Childrearing,” *William and Mary Bill of Rights Journal* 11 (2003): 991-1009.

¹⁰ Brennan and Noggle, “The Moral Status of Children,” 12.

¹¹ Ibid., 5-6.

for.¹² Thus we could say that parents are those who have the primary responsibility to meet their children's rights whether through protection (with respect to the former type) or provision (with respect to the latter). What the language of rights stresses is the independent status of the children's (relevant) moral claims. They are entitled to certain protections and provisions no matter what their particular attachments and affiliations happen to be, and we can figure out these entitlements by looking at the characteristics of children as children, namely as immature human beings. In what follows I do not deny that children have some such entitlements in the abstract. Yet I contend that the parent-child relationship and the obligations of justice attached to it are not *entirely* derived from child-centred considerations such as these. Moreover, the parent-child relationship is indispensable for arriving at a full-blown account of children's entitlements.

3. Two objections rejected

Before taking issue with the child-centred approach, I wish to reject two objections against it that I find unwarranted. I would like to suggest further that these objections point to important elements that we should try to preserve even if we decide to discard the proposed child-centred framework as a whole.

A. Separateness of persons

The first objection states that talking about children's rights or entitlements and stressing more generally their moral separateness from their parents undermines the significance of the family as an intimate sphere. Instead of a sharing of selves and identification with each other, rights-talk delineates boundaries between family members and alienates them from each other. It keeps children and parents apart

¹² See United Nations, *Convention on the Rights of the Child*, 1989 (www2.ohchr.org/english/law/crc.htm).

rather than bringing them together. Michael Sandel makes this point vividly when he asks us to imagine a family in which justice wins primacy over intimacy:

[O]ne day the harmonious family comes to be wrought with dissension. Interests grow divergent and the circumstances of justice grow more acute. The affection and spontaneity of previous days give way to demands for fairness and the observance of rights. And let us further imagine that the old generosity is replaced by a judicious temper of unexceptionable integrity and that the new moral necessities are met with a full measure of justice, such that no injustice prevails. Parents and children reflectively equilibriate, dutifully if sullenly abide by the... principles of justice... Now what are we to make of this?¹³

Abiding by principles of justice here seems to reflect a moral decay rather than an improvement. The virtuous family is not one in which the principles of justice are strictly implemented but one in which there is no need for them in the first place. Where there is harmony of interests and no conflict arises, the question of how to adjudicate between members is out of place. Thus, what we should really be aiming at is transcending the circumstances of justice altogether.

One way of responding to this objection, as we saw in the Introduction, is to argue that it overly idealizes the picture of the family. The family is indeed the site of harmony, love and altruism but it is also (and quite often) the site of limited resources, distributive claims and conflict. Further, we might question whether harmonizing the family is achieved only at the cost of ignoring or marginalizing some of the family members' legitimate claims; whether altruism and sacrifice are expected only from some and not reciprocated in turn.¹⁴ Although I am sympathetic to this line of argument it hinges on empirical claims. It does not deny the possibility of families being harmonious and altruistic, nor do I think it should.¹⁵

¹³ Michael J. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), 33.

¹⁴ See Okin's reply to Sandel's argument in her *Justice, Gender, and the Family* (New York: Basic Books, 1989), 29-33; see also Amartya Sen, "Cooperation, Inequality, and the Family," *Population and Development Review* 15, Supplement (1989): 61-76.

¹⁵ That was my argument in Section 1 of the Introduction.

As far as children are concerned, however, adopting the perspective of altruism also becomes philosophically problematic. The altruist puts others' interests before his own. But what is admirable in this is the altruist's *moral choice* to sacrifice his interests (or, less heroically, to put them on hold) to further the interests of others. It would be much less admirable – and at the extreme, morally repugnant – if someone else decided *for* him to sacrifice his interests to benefit others. Young children are not capable of exercising choice in the relevant sense, and this tells against their ability to act as true altruists. They lack “the fully developed capacity for the kind of moral agency that allows adults to interact with other moral agents on equal terms”¹⁶ and turns (some kind of) sacrifice into altruism. Parents can act altruistically and sacrifice (some of) their interests, desires and preferences for the sake of their children. But when applied to children, ‘expecting altruism’ becomes a license for parents to sacrifice their children’s interests. If we think that it is not morally permissible for parents to sacrifice their children’s interests in the same way they can sacrifice their own, then it seems to support the view that at some fundamental level children are morally separate from their parents and enjoy an independent moral standing.

Ferdinand Schoeman worries that emphasizing the separateness of children, at least in the case of infants, would also be counterproductive from a child-centred perspective. Such emphasis “may obscure the real point of moral criticism intended in the case of parent–infant relationships.” This, Schoeman suggests, concerns parents “not furnishing the love, attention, and security we think it every parent’s duty to provide.”¹⁷ What children really need, especially in the early stages of their lives, is for their parents to form secure and loving intimate relationships with them; but adopting the language of rights, so the claim goes, will only encourage parents to take a step back from this. Now this may be true in cases identified as neglect, particularly emotional neglect. But the point does not hold in cases of abuse which, surely, give rise to moral

¹⁶ Noggle, “Special Agents: Children’s Autonomy and Parental Authority,” 100.

¹⁷ Ferdinand Schoeman, “Rights of Children, Rights of Parents, and the Moral Basis of the Family,” *Ethics* 91 (1980): 6-19, at 8.

concern and criticism to no less extent than neglect does. In cases such as physical, sexual and emotional abuse it is the *lack* of moral boundaries that is extremely problematic, not the *existence* thereof. In relation to this point it is important to keep in mind that the separateness concerned is of the children's *moral* standing, not their material or emotional status: The endorsement of the separateness of children with respect to the former does not necessarily entail the same with respect to the latter. Indeed one may cogently say that it is the separateness of children as moral beings that makes it impermissible for parents to sacrifice their interest in having bonds of attachment.

I therefore reject this particular critique not because it is wrong in claiming that the child-centred approach emphasizes the children's moral separateness from their parents but because the child-centred approach is right in doing so. Parents do not have authority over their children as they have over themselves. There are limits to what they are morally permitted to do to their children and this reveals, in turn, that children's moral standing is separate from their parents'. Even if, eventually, we do not account for justice in the family in terms of children's abstract entitlements, the separateness of persons is an important insight that should be reflected in our account as well.

B. Violation of privacy

A different concern is that adopting rights-talk with respect to children invites public scrutiny as to whether parents are respecting those rights. It adopts a "legalistic" terminology of "explicit rules of duty and entitlement" and thus focuses on "overt, clearly definable acts."¹⁸ It encourages the precise articulation of the content of parental duties and introduces the prospects of state intervention in cases where those duties are not precisely discharged. By opening up the parent-child relationship to a third-party – namely, the state – it undermines the sense of security that is crucial for maintaining the intimate and spontaneous nature of the family. The state requires

¹⁸ *Ibid.*, 15.

parents “to think of themselves as primarily serving public ends and as having public duties.” It also encourages children (or people acting on their behalf) to make claims against parents. This intrusion thereby violates the privacy and autonomy of the family and “beclouds the integrity of the trust and devotion that can arise between people.”¹⁹

One thing that is not clear here is the too-close connection between moral rights and their institutionalization in enforceable positive rights. The implicit assumption seems to be that the point in offering a rights-based account is to enable its incorporation *as it is* into the legal code. This explains the claims that a rights-based “*moral strategy*”²⁰ has to comply with legalistic standards, and implies excessive state intervention. But why should it be so? How is it different from accounts couched in children’s needs or parents’ duties? One may suggest that entitlements- or rights-based accounts not only shift the focus from the provider to the recipient – this holds also for needs-based accounts – but also portray the recipient as claimant, and that portrayal might undermine the provider’s discretion. The right-holder can make a claim against the duty-bearer but then it is no longer a unidirectional process. It opens the door for disagreements which may, in turn, call for arbitration. This seems true as far as it goes. Children can legitimately claim from and against parents as often happens; disagreements do arise between them and arbitration might be required. But there is no reason to assume that, for the most part, this should be brought into court. Parent and child (or another person claiming on behalf of the child) can try to talk their disagreements through. If this does not work out a third-party may be introduced, but this need not be the state; the third-party could be the other parent, a close relative or family friend. Articulating what children can morally claim from their parents neither means they can claim it all in court, nor that this is always how it should be.

In the following sections I will argue that the child-centred approach cannot fully account for parental obligations independently of the children’s actual relationship with their parents. But this is not to say that some claims made by children cannot extend

¹⁹ *Ibid.*, 16.

²⁰ *Ibid.*, 9; emphasis added.

beyond the parent–child relationship. Not every claim that children may have from or make against their parents is a private family matter. Schoeman recognizes this as he rejects the notion of absolute privacy.²¹ Privacy and autonomy are matters of degree. Thus, on the other side of the coin from acknowledging that the family is a *somewhat* private sphere is that it is also somewhat public or, putting it a bit differently, that some of what is going on there is also the concern of people outside the family.²² Setting the violation of privacy objection aside I now move to more difficult issues the child-centred approach has to face.

4. Assignment problem: Why parents?

Returning to the Lockean picture sketched above we can observe that as it stands it lacks a crucial explanatory component. It argues for a set of universal entitlements children have in virtue of certain of their characteristics, and then depicts parents as the (primary) bearers of the duty to meet those entitlements. But immediately the question arises: Why is it an obligation *of parents*?²³ As Onora O’Neill puts it, “a consideration of needs and interests cannot show who (if anyone) has the obligation to meet the claims of a particular child.”²⁴ We, therefore, need to seek an account linking particular providers – parents, in our case – to particular children.

²¹ Ibid., 10.

²² This is explored and developed in Chapters 2 and 5.

²³ See Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974), 287-9, where this question is raised against Locke and left unanswered. Notice that this question does not arise (or, perhaps more accurately, is internally answered) if we start our exploration from the parent–child relationship itself, asking what ‘being a parent’ is, and only then go on to articulate the set of obligations attached to our understanding of ‘being a parent.’ This is the path pursued in Chapters 3 and 4.

²⁴ Onora O’Neill, “Begetting, Bearing and Rearing,” in Onora O’Neill and William Ruddick (eds.), *Having Children: Philosophical and Legal Reflections on Parenthood* (New York: Oxford University Press, 1979), 27.

A. Vulnerability?

One such an account is Robert Goodin's vulnerability model of special responsibilities.²⁵ It seems particularly relevant to the issue at hand as it takes as its starting point the intuition that parents owe something special to their children.²⁶ The vulnerability model holds that "your special responsibilities derive from the fact that other people are dependent upon you and are particularly vulnerable to your actions and choices."²⁷ With respect to children, Goodin argues that they find themselves especially vulnerable to their parents, and this translates into special responsibilities parents have towards their children. This is meant to encompass the initial parental responsibilities prior to any socially allocated ones.

The special needs of the infants are determined by nature. How they are met is ordinarily determined by society... Suppose, however, that a given society makes no allocation of child-care responsibilities whatsoever; it would be wrong to say that no one has responsibility for child care. Rather, parents have primary responsibility to care for their children, or to arrange for someone else to do so, until society makes other arrangements... This is merely because – given their crucial causal contribution to producing this vulnerable child, and in the absence of any further social signposts – parents are the *obvious* candidates to bear such responsibilities. Obviousness comes to have moral significance, in turn, by virtue of the reactions of other people. The nearest person is obliged to rescue the drowning swimmer, for example, because other people will regard him as the obvious person to do so and will wait for him to act. Similarly, in the absence of any specific social mandate, a child's natural parents will be regarded as the

²⁵ Robert E. Goodin, *Protecting the Vulnerable: A Reanalysis of Our Social Responsibilities* (Chicago: Chicago University Press, 1985). An alternative reductionist account of special responsibilities is one that grounds them in voluntary undertaking. With respect to the parent-child relationship, the argument is that parents themselves assumed the special parental responsibilities through their voluntary entry to the relationship whether directly through adoption, or indirectly through conception and delivery. It becomes reductionist when the voluntary undertaking is, in turn, justified through an appeal to general moral considerations such as a principle of human rights; see Alan Gewirth, "Ethical Universalism and Particularism," *Journal of Philosophy* 85 (1988): 283-302; and, for the first part of the argument, also O'Neill, "Begetting, Bearing and Rearing," and Blustein, *Parents and Children*, 142-7. I will not discuss this account here as it does not accord with the child-centred approach being examined.

²⁶ Goodin, *Protecting the Vulnerable*, 33-4.

²⁷ *Ibid.*, 33.

obvious bearers of child-care responsibilities vis-à-vis that child, which in practice makes the child most vulnerable to its natural parents.²⁸

Several different considerations seem to be at work here. To begin with, parents are taken to be the “obvious” candidates for child-care. But what makes one an obvious candidate? Two different considerations are offered: causal responsibility and physical proximity. Biological parents played a crucial role in bringing the child into existence (and thus gave rise to the issue of child-care in the first place), and at least the mother is physically present when the child is born. But it is not clear what moral significance we should ascribe to these facts. Causal responsibility usually loses (a great deal of) its moral significance if it is not accompanied by some element of intention or negligence. (Think of a traumatized woman carrying to term a child conceived through rape.) Physical proximity can have some moral significance but provides far less guidance when it involves more than one candidate (think of the midwife present at birth, or the medical staff involved in a Caesarean section), or in cases that are not strict emergencies. The drowning swimmer analogy may work only for the here and now. After that, physical proximity leaves the special responsibilities towards children undetermined due to the trivial fact that people, including children, are mobile.

It is important to note, however, that no matter what the criterion for obviousness is, Goodin acknowledges that it becomes morally significant only by virtue of other people’s reactions. It happens to be the case that a child’s biological parents are regarded by others as the obvious bearers of child-care responsibilities towards their child, and this reaction from others is what makes the child most vulnerable to its biological parents. So it seems that the ultimate consideration for biological parents having special responsibility towards their own children is that other people assume they will take care of them. In other words, biological parents are the “obvious candidates” from a *social* perspective. However, this consideration cannot work here. The original question was whose responsibility it is to take care of children where society does *not* make any allocation of such responsibilities. The answer pointed

²⁸ Ibid., 82; emphasis in origin.

towards biological parents and the argument given was that society (“other people”) regarded them as the obvious candidates. But this only indicates that that society did in fact have child-care responsibilities allocated, albeit implicitly. Absent further argument, treating biological parents as the obvious duty-bearers is nothing but a social convention of allocating child-care responsibilities.

Going back to physical proximity, where all other things being equal, it may play quite a substantial role in the way special responsibilities are morally distributed. “‘Help the person standing next to you’ makes sense when, as far as we know, each is equally in need of help, and each equally able to provide it.”²⁹ But all other things are rarely equal when it comes to the ability of adults to provide for children’s needs. Then, “it would seem odd to put the well off in charge of the well off and the badly off in charge of the badly off.”³⁰ Where other people are more able than the biological parents to provide for the children’s needs, the children become more vulnerable to those others’ actions and choices, and this in turn has the implication that those others have (the strongest) special responsibilities towards them, not the biological parents.³¹

Goodin anticipates this objection yet insists that “the task falls to the parents in the absence of alternative arrangements made either by themselves or by their society.”³² The reason he provides in support of this claim relates to the children’s nonmaterial vulnerabilities. “Getting money from strangers is not the same as getting it from parents, because in the latter case money betokens something even more valuable – love.”³³ However this cannot work either, unless we assume that biological parents are especially capable of loving their children.³⁴ If we want to avoid this blanket assumption,

²⁹ David Miller, *On Nationality* (Oxford: Oxford University Press, 1995), 63.

³⁰ *Ibid.* Miller makes this point with respect to the special responsibilities we have to fellow members of our national community.

³¹ The “first principle of individual responsibility” says that “if A’s interests are vulnerable to B’s actions and choices, B has a special responsibility to protect A’s interests; the strength of this responsibility depends strictly upon the degree to which B can affect A’s interests” (Goodin, *Protecting the Vulnerable*, 118).

³² *Ibid.*, 83.

³³ *Ibid.*

³⁴ Locke seems to make the claim that biological parents are ‘preprogrammed’ to be especially suitable for caring for their children: “God hath made it [the parents’] business to employ this care on their offspring,

as I think we should, then the vulnerability model simply tells us to look for the person who is most able to provide for a particular child's needs – both material and nonmaterial.³⁵ Although the vulnerability model starts from the intuition “that we owe something special to our children,”³⁶ it results in undermining that very intuition. Ultimately, a rich and affectionate neighbour may find himself on a par with the parent of a newborn child.

B. Assigned responsibility?

However, we may concede that parents do not have special responsibilities towards their own children to begin with, but that society has good reasons for assigning primary child-care responsibilities to the former vis-à-vis the latter.³⁷ Consider the following argument with respect to the human right of children to be loved:³⁸

As the right of children to be loved is a human right, on certain understandings of human rights, this means that *all able human beings* in appropriate circumstances have a duty to promote every child's being loved, *even when the biological parents are available*. At the same time... biological parents should typically be the primary dutybearers for the following reason: Usually, when there is a general duty that everyone has, but where it would be impractical if everyone in fact tries to fulfil that duty at the same time, a primary dutybearer is assigned using such criteria as responsibility, proximity, ability and motivation.³⁹

and hath placed in them suitable inclinations of tenderness and concern to temper this power, to apply it, as his wisdom designed it, to the children's good, as long as they should need to be under it” (*Two Treatises*, 309).

³⁵ I pursue this point further in the following subsection.

³⁶ Goodin, *Protecting the Vulnerable*, 33.

³⁷ In accounting for special obligations, vulnerability and assigned responsibility are not mutually exclusive but have a feedback relationship. In particular, vulnerability results in part from assigned responsibility. But this *further* vulnerability does not explain the original assignment of responsibility. In the first instance it is either natural vulnerability (discussed above) or some other consideration(s) underlying assigned responsibility (discussed below). See *ibid.*, 124-5.

³⁸ I am not interested here in the issue of whether children do, in fact, have such a right but in the structure of the argument which links general claims of children to special obligations of parents.

³⁹ S. Matthew Liao, “The Right of Children to Be Loved,” *Journal of Political Philosophy* 14 (2006): 420-40, at 431; emphasis added.

We start from the general claims that children have against all of humanity. But demanding all of humanity to simultaneously discharge the corresponding general duties towards all children will be counterproductive, especially when it comes to children's nonmaterial needs. We therefore decide to assign particular agents vis-à-vis particular children with the primary responsibility to discharge humanity's general duties towards all children. Using various criteria we come to establish the rule that biological parents are the primary duty-bearers. Thus, parents' special duties towards their children are, to borrow from Goodin, "merely distributed general duties," the result of a useful social convention.⁴⁰

Let us examine the reasoning by which the general duty of humanity is translated into a special duty of the parent. According to Liao, biological parents are good candidates for being assigned the primary responsibility because at least three of the aforementioned criteria – responsibility, proximity and motivation – usually pertain to them. Liao acknowledges that "one cannot say, as a general rule, that biological parents also have the ability" to discharge the duty, but he immediately adds that "there is always the possibility that biological parents can be assisted in this matter."⁴¹ I have already questioned the relevance of the causal responsibility and proximity criteria with respect to the vulnerability model. We may also suggest that since we are now considering a collective action problem these considerations are even less relevant. Society can easily mobilize people and make the proximity criterion redundant. And the initial responsibility of biological parents seems less important when prospective

⁴⁰ Robert E. Goodin "What Is So Special About Our Fellow Countrymen?" *Ethics* 98 (1988): 663-86, at 678. Cf. Philip Pettit and Robert Goodin, "The Possibility of Special Duties," *Canadian Journal of Philosophy* 16 (1986): 651-76, which characterizes special duties as "relativised and independent moral demands," where "independent" stands for "not engaging the agent just because of his being bound by some other duty whose fulfilment requires that it be honoured" (ibid., 656). There is a tension between this and the view of special duties being distributed general duties, the former being fundamentally instrumental in the realization of the latter. Reconciliation seems to be offered through the distinction between 'first order' special duties, viewed primarily from the perspective of the relevant agent, and the 'meta-duty' to optimally allocate responsibilities among agents so that the production of desirable outcomes is maximized (ibid., 673-4). From a morally fundamental point of view – captured by this meta-duty – 'first order' special duties are hence distributed general duties. The argument that follows is not meant as a critique of this general model but of a child-centred version thereof.

⁴¹ Liao, "The Right of Children," 432.

adoptive parents are introduced into the picture. If others are willing to assume responsibility for children, why should society insist that biological parents keep bearing responsibility?

But putting these doubts aside, we should keep in mind the context within which this argument is examined. We are here questioning whether a *child-centred* approach is a promising route to account for what justice requires of parents. So even if we grant that children have some general claims against humanity, when we attempt to explain why it is that parents have the primary responsibility for meeting these claims it must be through child-centred considerations. Proximity and responsibility might play some role in non-child-centred considerations, such as efficiency and the burdens that third-party persons can legitimately be expected to shoulder. However, these considerations cannot be invoked within the framework of the child-centred approach.⁴²

We are therefore left with two considerations: ability and motivation. As Liao recognizes, it is quite often the case that the issue of ability points to people other than the children's biological parents. So even if we grant that parents are typically motivated to meet children's claims, the combination of the two factors leaves the assignment of responsibility open. Moreover, the assumption that parents are typically motivated to provide for their children does not preclude the possibility that others will also be motivated to provide for them. Surely there are some cases where other adults are highly motivated (e.g. when they cannot have children of their own) while the biological parents are not very much so. But even in cases where the parents' motivation is stronger, at some point the better ability of others to provide for the children will outweigh the motivation factor (as long as those who are better able are not entirely unmotivated). In the end, whether the combination of these two considerations points to the biological parents or to other adults is very much a contingent matter.⁴³

⁴² This is not an argument *contra* Liao but rather against employing this part of his reasoning within a child-centred framework.

⁴³ For a similar argument arriving at the same conclusion, see also Vallentyne, "Rights and Duties of Childrearing," 1000.

But perhaps we should take this conclusion as a normative directive. Instead of accounting for the special responsibilities biological parents have, perhaps the argument is indicating who the custodial parents should be. The thought is this: Starting again with the general duties everyone has towards a specific child, when faced with the practical necessity of assigning a primary duty-bearer we are led by child-centred considerations of ability and motivation to the most promising candidate. That candidate should be the one to whom primary child-care responsibility is assigned and this may or may not converge with biological parenthood.

C. The redistribution objection

In the following section I question the plausibility of thinking about the special duties of custodial parents as deriving their entire content from the antecedent general duties we all have towards all children. But before addressing that issue I want to stress a particular difficulty with the normative child-centred version of the assigned responsibility account.

The fact of the matter is that most children already come attached to particular adults who assumed parental responsibility over them. (These adults need not be the biological parents of their children. They may, for example, assume parental responsibility through adoption or surrogacy arrangements.) Now what should happen if it turns out that the de-facto parents are facing difficulties in discharging their duties towards their children? We may suggest that since the special duties of parents are fundamentally general duties we all have towards their children, we still retain associative duties “to help alleviate the burdens on the primary dutybearers.”⁴⁴ Discharging the associative duties may take various forms either direct or indirect (e.g. by voting for relevant policies or through redistributive schemes). This I think seems quite plausible with respect to at least some of the parents’ duties.

⁴⁴ Liao, “The Right of Children,” 433.

But a different strategy is also available. If there happen to be other candidates for parenting who score higher than the de-facto parents in the combined scale of ability and motivation, we can simply reassign the primary responsibility to those other candidates. Why should we bother assisting struggling parents while there are other candidates at hand willing to step into their shoes? The assigned responsibility account is at best agnostic about the two alternatives. The moral concern is to provide for the child's needs whereas the question of *who* provides for these needs becomes a practical matter only. From a child-centred perspective the alternatives seem to be on a par.

Yet most people, I believe, will find it counterintuitive. Liao seems to share this intuition as he does not even mention the redistribution strategy. He goes on to discuss at some length several policy implications that follow from children's human right to be loved, but throughout his discussion there is a strong inclination to leave children where we find them, at least when they already have a placement.⁴⁵ We are asked to promote parenting education schemes and generous welfare policies to assist parents, but taking children away from them is never considered. This becomes even more obvious in his discussion of some innovative programmes concerning children without placement. We are told about a US government initiative that aims to assist children orphaned as a result of HIV/AIDS in Africa by supporting a Nairobi hospice which brings together "750 children who *have lost* their parents and 250 elders who *have lost* their children" to create a village offering "what every child needs most – love."⁴⁶ Indeed this seems an admirable project. But the parents of those children had probably been struggling to meet their needs for quite some time before they died. Facing the alternative redistribution strategy, should we have "waited" for the children to become orphaned? And wouldn't the children have been better off had the hospice been located in America rather than in Africa?

Or consider Liao's call for rethinking the single-family adoption scheme and exploring the possibility of co-adoption by individuals from different families. This, he

⁴⁵ *Ibid.*, 434-40.

⁴⁶ *Ibid.*, 435; emphasis added.

says, “could be especially attractive to those who are qualified to adopt a child but who may not have the time and resources to do so, because the time and cost required to raise an adopted child would be shared.”⁴⁷ This looks quite plausible as far as it goes. But, again, why should we limit this suggestion only to adoption schemes? Shouldn’t we allow the rich to co-parent the children of the poor? And if that is the case why stop at co-parenting and not allow the rich to have full custody?

Earlier I stated that if we follow the assigned responsibility account the redistribution strategy seems to be on a par with the alternative of assisting de-facto parents. But now we can appreciate that in some circumstances it is *committed* to favouring the former. Where the burdens parents are facing result from deep sociological and economic structures, assisting them is likely to imply and necessitate far-reaching institutional changes. Even if these changes have prospects of success it will take years for them to bear fruit. This might be too late for the children struggling currently. Should children therefore be redistributed across society from the poor to the rich? Should we go even further and redistribute children across the globe from developing to developed countries? The assigned responsibility account seems to tell us that it is our duty to do so. If parental responsibility is an assigned responsibility, why not *reassign* it?

It is difficult, if not impossible, to see how one could resist this conclusion while holding fast to the child-centred approach that abstracts the child’s moral claims from his initial relationships and affiliations. Let me quickly point out why some common responses will not do the work here. First, one may suggest that we should not redistribute the children away from their current care-takers because of the importance of continuity of care for children’s emotional well-being and development.⁴⁸ This is indeed an important consideration but one that can be factored into the decision of

⁴⁷ Ibid., 439.

⁴⁸ On the importance of continuity of care, see Anne Alstott, *No Exit: What Parents Owe Their Children and What Society Owes Parents* (New York: Oxford University Press, 2004), especially Chapter 1. Liao hints at this line of argument by saying that continuity of caretaker is a necessary (but not sufficient) condition for children’s being loved (“The Rights of Children,” 436).

whether a child will be better off with the candidate alternatives. Introducing this consideration will probably move the tipping point farther down the line, but it is unlikely to make it disappear. Moreover, acknowledging that the adjustment to a new placement is a difficult and painful process might in fact justify acting rather quickly, redistributing the child at an earlier stage or even at birth before the child develops strong bonds of attachment to the parent.

A different response might be that taking the child away from his current social and cultural context could damage his sense of identity. However this again seems to be of less significance if redistribution takes place closer to birth,⁴⁹ and in any case does not tell against redistribution *within* the same social and cultural context.

The last response I wish to reject here concerns the transaction costs involved in such mass redistribution of children across the globe. One may be willing to accept the theoretical conclusion yet insist that the enormous transaction costs involved cancel out any real-world implications of such a concession. In other words, we need not worry too much about this potential strategy because it is, in fact, impractical. However, there are two points to be made here. First, it is not at all clear that the institutional reforms required for assisting currently struggling parents in both developed and developing countries are more practical or less costly than the redistribution strategy. But more importantly, this consideration may only have relevance at the level of policy. It still allows for the conclusion that struggling parents are morally *required* to give away their children to the benevolent rich if they show up on their doorstep ready to assume primary responsibility over the children.⁵⁰

I think many will agree that this conclusion is quite troubling and this tells in the direction of allowing some non-child-centred considerations to come into play. In liberal

⁴⁹ See David Archard, "What's Blood Got to Do With It? The Significance of Natural Parenthood," *Res Publica* 1 (1995): 91-106, at 100-1, which also discusses the relevance of biological parenthood itself to the child's identity, and my discussion of this issue in Chapter 3, especially note 54 and the accompanying text that follows.

⁵⁰ As my argument in Chapter 5 shows, unfavourable circumstances may be such that justice requires parents to give away their children; but then it is because they *cannot* meet their interests, not *merely* because someone else can better meet them.

theory, however, the parent–child relationship is often portrayed from a child-centred perspective, even though the implications of holding fast to that perspective are rarely acknowledged. Indeed, as far as I am aware, Peter Vallentyne is the only philosopher ready to bite the redistribution bullet. According to his view, “if the interests of the child would be better served by some other interested party having the childrearing rights, then the procreators do not have childrearing rights,” and “[t]hose for whom possession of childrearing rights would best promote the child’s interests have the moral power to obtain those rights.”⁵¹ He is aware of the objection that this view does not give adequate weight to the “very profound interest” many people have in childrearing but argues from the outset that “[n]o one thinks that *anyone* who wants to raise a given child has a right to do so.”⁵² This is surely right, as (most obviously) in cases of abusive parents. Moving to his positive defence of the child’s-best-interest condition he argues:

Those who have a deep interest in raising some particular child therefore have a strong incentive for ensuring that they meet this condition. Of course, this will not always be possible. When it is not, there is a conflict between the prospective parent’s interests and the child’s interests. Given that the child has independent moral standing, and the rights at issue are rights to control access to the child, it is quite plausible that the child’s interests take priority over the potential custodial parent’s interests.⁵³

I accept Vallentyne’s point that children have independent moral standing and I agree it is plausible that the child’s interests take priority over the interests of the potential parents. But Vallentyne’s idea of *always* granting *absolute* priority to the child’s interests does not necessarily follow from this. Let me explain. The child’s independent moral standing surely implies that the interests of the child should be taken into account. But when they conflict with someone else’s interests the child’s independent moral standing implies that they need to be *balanced* against the other’s interests, not that the former automatically overrides the latter. One way of balancing them – a

⁵¹ Vallentyne, “Rights and Duties of Childrearing,” 997, 998.

⁵² *Ibid.*, 1000; emphasis added.

⁵³ *Ibid.*, 1001.

subject to be developed in chapters 3 to 5 – is to view children’s interests as having priority, perhaps absolute priority, as long as they fall below a certain threshold of obligation in meeting their interests, but to allow for the parents’ interests to have more, perhaps crucial, weight above that threshold. This, of course, goes beyond the child-centred approach but it does seem compatible with accepting that children have an independent moral standing.

5. Correlation problem: Good parents, bad parents?

Even if we bite the redistribution bullet the resultant account is still problematic, as it runs the risk of providing too narrow as well as too wide a set of parental obligations. To recap, the child-centred approach starts by asking what children can morally claim as distinct from the special relationships they actually have, and then tries to link it to the duties of specific others – most notably their parents. The previous section questioned the identity of those primary duty-bearers; whether this approach succeeds in translating *our* general duties towards children into *their actual* parents’ special duties. In this section, however, I question whether the set of claims children can make in the abstract correlates with the set of obligations parents, whoever they may be, have towards them. I advance the claim that the resulting account is too narrow to correlate with the set of obligations identifying good (-enough) parents. At the end of the section I also point out why the account may be too broad to correlate with the set identifying (definitely) bad parents.

The child-centred approach suggests that the obligations of justice that parents have to their children fundamentally derive from the claims the latter have upon all of humanity. But one may counter that we normally expect a great deal more from parents as regards their children than we expect from humanity with respect to all children. Taking the obligations of parents as correlative of children’s general claims upon humanity thus provides us with a very narrow set of obligations which seems far from

complete. This point is elaborated by Onora O’Neill through the distinction, in Kantian terms, between perfect and imperfect obligations.⁵⁴ Obligations are perfect when they fully specify “not merely who is bound by the obligation but to whom the obligation is owed.”⁵⁵ They are general (or universal in O’Neill’s terminology) if we have them with respect to all others, and special if we have them only with respect to specified others. By contrast, imperfect obligations are ones we have neither to all nor to specified others but to unspecified others. According to O’Neill, what is of importance in this distinction for our case is that while perfect obligations have corresponding claim-rights on the recipient side, imperfect obligations do not have such rights. “[S]o long as the recipients of the obligation are neither all others nor specified others, there are no right holders, and nobody can either claim or waive performance of any right.”⁵⁶ Thus, if we start by asking what children in the abstract can claim from all of humanity or, in other words, what children’s general rights are, we will have the set of general perfect obligations as our answer but will lose sight of the set of imperfect obligations. And this has crucial implications for children’s lives since they are “particularly vulnerable to unkindness, to lack of involvement, cheerfulness or good feeling,”⁵⁷ all of which are addressed through the latter set.

For instance, think of the moral obligations not to abuse or neglect children. Not abusing children is an obligation that may plausibly be said to hold independently of any institutional framework or special relationship we may find ourselves sharing with specific children. We thus seem to have a general perfect obligation not to abuse children, that is, an obligation with respect to all children. Accordingly, every child has a claim-right against us not to be abused. We will lack even the opportunity to violate this claim-right of the vast majority of children as we will never have any contact with them. By contrast, not all children may have a claim-right against us not to be neglected. Imagine

⁵⁴ Onora O’Neill, “Children’s Rights and Children’s Lives,” *Ethics* 98 (1988): 445-63. In what follows I focus narrowly on O’Neill’s application of her Kantian constructivist ethics to the issue in question, and leave to one side the related foundational assumptions of O’Neill’s model.

⁵⁵ *Ibid.*, 447.

⁵⁶ *Ibid.*, 448.

⁵⁷ *Ibid.*, 450.

you received a letter from a child whom you had never met and have no relation to complaining about your neglect of him. Your response to the letter would probably be some mixture of amazement and bewilderment: “But I don’t know him! I’ve never even heard of him... How can he accuse me of neglect?!” To be sure, the child might have justified claims against you. Perhaps he is in dire need and you have surplus resources to provide some relief. (‘HELP ME!’ is not likely to generate a similarly bewildered response.) But one claim he cannot have is that you are neglecting him. This is because claims of neglect must presuppose some institutional framework or interpersonal relationship, shared by the neglecting and neglected parties. This does not mean, according to O’Neill, that you and the rest of us have no fundamental⁵⁸ obligation not to be neglectful of children. This obligation may bind all (human) moral agents. However, since it is an *imperfect* obligation it has no correlative *fundamental* right. There are no allocated right-holders before imperfect obligations are institutionalized and thus, as long as “we consider them in the abstract, nothing can be said from the perspective of recipience.”

For O’Neill this entails a shift from the perspective of recipience to that of action; from the perspective of the claimant to that of the contributor; in short, from rights to obligations. Let us examine how her obligation-oriented constructivist approach might help us in tackling the issue in question.

The basis of the universalizing construction is rejection of action which reflects principles that cannot be universally acted on by a plurality of distinct rational beings. Human beings are, however, not merely distinct rational beings: they are also *vulnerable* and *needy* beings in the sense that their rationality and their mutual independence – the very basis of their agency – is incomplete, mutually vulnerable and socially produced... A plurality of distinct rational beings who are also needy cannot therefore universally act on principles of mutual indifference... However, it is impossible to help all others in all ways or to develop all talents or even some talents in all others. Hence obligations to help and to develop others’ capacities must be imperfect obligations... The construction of imperfect obligations commits rational and needy beings only to avoiding *principled* refusal

⁵⁸ ‘Fundamental’ here is taken to mean not derived from or dependent on specific social arrangements or relationships; see *ibid.*, 447.

to help and *principled* neglect to develop human potentialities. The specific acts required by these commitments will vary in different lives. Those who live or work with children are likely to find that they must take an active part both in their care and in their education if inaction is not to amount to principled refusal of those commitments.⁵⁹

Despite the abstract point of view on which the construction of obligations is based, it retains sensitivity to context and circumstance. O'Neill's construction aims at formulating a universal set of obligations but she is well aware of the need to refer to concrete social contexts with their actual practices and institutional arrangements, as well as to individuals' interpersonal relationships, before we can ascertain the exact implications of this set of obligations for our actions.⁶⁰ This is quite different from outlining a *complete* account of children's entitlements in the abstract. As we saw with respect to neglect, that risks leaving crucial parts out of the moral picture. By contrast, the construction of obligations allows for the possibility of some *imperfect* moral requirements; imperfect as long as they are considered from the abstract point of view. It tells us we need some more details about people's contexts, institutions and relationships, values and beliefs – in short, their concrete lives – before we can fully determine what they owe and can demand morally.

This goes some way in underlining the ways in which what is morally required of us depends on actual circumstances. Yet, as it stands here, O'Neill's account still retains a certain ambiguity with respect to the precise relation between imperfect obligations and special relationships. At times, it seems that special relationships are established in order to discharge imperfect obligations. As O'Neill repeatedly observes, we *cannot* discharge those obligations towards all people. Special relationships, therefore, match specific agents with specific recipients.⁶¹ But this understanding comes very close to the assigned responsibility account discussed above. One thing that supports this reading of

⁵⁹ Ibid., 457-8; emphases in original.

⁶⁰ In O'Neill's terms imperfect obligations call for institutionalization into special obligations "whose specific content depends on the specific social and political arrangements and the roles and commitments agents undertake" (ibid., 448; see also at 458-9).

⁶¹ Ibid., 448.

O'Neill is her grouping of parents together with teachers and social workers.⁶² In the latter cases we first have quite a concrete grasp of the goods or services that ought to be provided, be they education or welfare, and then special relationships are established whereby provision of these goods and services is made. It is in order to discharge what is to a large extent an already determinate content of the obligation to provide education that we establish specific teacher–student relationships. Although the obligation is only an imperfect one before the special relationship is in place – we do not know with respect to whom we ought to discharge it – it is the content of the obligation which *explains* the nature of the special relationship. (I am first *a* lifeguard, teacher or social worker and only then am I *your* lifeguard, *her* teacher, *his* social worker.)

However, the relation between fundamentally imperfect obligations and special relationships may run deeper. Consider, for example, the obligation to give particular attention. It may take many forms, such as attending a friend's birthday or visiting a family member in hospital. Now this obligation is surely not a general perfect obligation but it seems neither to be an imperfect obligation of the provision-of-goods-or-services kind. If you had no impending birthday celebrations or sick relatives, you would not be morally required to pursue this obligation with respect to strangers. This point can be nicely illustrated with a scenario, offered by Michael Stocker, of us being hospitalized and receiving a visit from Smith whose relation to us is unclear:

You are very bored and restless and at loose ends when Smith comes in once again. You are now convinced more than ever that he is a fine fellow and a real friend – taking so much time to cheer you up, travelling all the way across town, and so on. You are so effusive with your praise and thanks that he protests that he always tries to do what he thinks is his duty, what he thinks will be best. You at first think he is engaging in a polite form of self-deprecation, relieving the moral burden. But the more you two speak, the more clear it becomes that he was telling the literal truth: that it is not essentially because of you that he came to see

⁶² *Ibid.*, 448-51.

you, not because you are friends, but... simply because he knows of no one more in need of cheering up and no one easier to cheer up.⁶³

The feeling that something has gone wrong here seems to do with the detachment of the obligation from the special relationship in which it is normally embedded. In this case, the imperfect obligation to give particular attention is quite different from the imperfect obligations to rescue or to provide education or welfare and their translation into special obligations of lifeguards, teachers and social workers. These imperfect obligations could also be discharged by people “coming from nowhere” – passers-by, substitute teachers, Good Samaritans. But Stocker’s scenario shows that it is not the case with all imperfect obligations (or with all instantiations of discharging imperfect obligations), some of which are more deeply attached to particular special relationships already in place. There is a sense in which the content of the obligation *is explained by* the nature of the special relationship. (It is *not* the case that I am first *a* parent or friend and only then *his* parent or *her* friend.⁶⁴)

O’Neill seems to acknowledge this in a later discussion where she introduces a further category of *special* imperfect obligations.

[G]ood parents will take it that they owe their children certain sorts of love, attention and support which they do not owe to all, *which are quite specific to the relationship to the child*, but to which their children have no right. Certain sorts of fun, warmth and encouragement might come under this heading: these are special

⁶³ Cited in Matthew S. Liao, “The Idea of a Duty to Love,” *Journal of Value Inquiry* 40 (2008): 1-22, at 17.

⁶⁴ But I can first be a foster-carer and only then *this child’s* foster-carer and this seems to undermine the distinction I am trying to establish, specifically with respect to my example of giving particular attention, since in this case (as in those of lifeguards, teachers and social workers) the explanation runs from the obligation to give particular attention to the special relationship. Yet I think there is still a difference here. The foster-carer’s attention is not genuinely particular but derivative from the collective attention we owe all those in need, and that kind of attention falls short (with respect to each recipient) compared to the genuinely particular attention parents owe their children. Therefore, it is not a mere coincidence that foster-caring is usually a stop-gap measure, has quite fixed terms and is performed in return for material benefit. It reflects the difference between the obligation of parents to give particular attention to their children and the obligation of us all to give collective attention to the needy.

imperfect obligations that parents see as part of what is required of good parents.⁶⁵

Taking this point seriously implies that as long as we retain an abstract point of view we cannot tell the exact set of parental obligations, since certain fundamentally imperfect obligations are more specific to the parent–child relationship than others and we cannot know *which* obligations those are before considering the nature of that relationship. As O’Neill writes, parents “who meet only their perfect obligations would fail as parents... They would not merely fail to be saintly or heroic parents... They would fail in much that we take to be straightforwardly obligatory for parents.”⁶⁶ The outcome of this discussion is that this remains true even after general imperfect obligations are added to the picture. This may still fall short of the complete set of obligations as the latter may also include some ‘special imperfect obligations.’ When abstracting from the special relationship already in place, whether we focus on what children are entitled to or on what adults in general owe them, we run the risk of coming up with too narrow a set of parental obligations.

To conclude this section I want to briefly mention and reject an alternative suggestion according to which child-centred approaches are not meant to provide us with the complete set of obligations of parents but the necessary (even if not sufficient) conditions without which they cannot be considered good parents. In response to O’Neill’s critique of rights-based approaches, Harry Brighouse claims that “It is not that one could be a good parent while only observing the child’s rights; but that one can be a good parent without doing everything that will be good for them, and cannot be a good

⁶⁵ Onora O’Neill, *Towards Justice and Virtue: A Constructive Account of Practical Reasoning* (Cambridge: Cambridge University Press, 1996), 151; emphasis added. See also 136-41, 146-53, 189-200. I think that O’Neill is wrong, however, in holding that children cannot be said to have special rights correlating to their parents’ special imperfect obligations. Her thought seems to be that since parents cannot shower attention, encouragement and affection on their children *all the time*, the latter cannot have a right to *any specific such act* on behalf of the former. But children may still have a special claim-right to some *overall level* of attention, encouragement and affection from their parents. (This might point to a difference between general and special imperfect obligations more generally.)

⁶⁶ O’Neill, “Children’s Rights and Children’s Lives,” 449.

parent without doing those things to which they have a right.”⁶⁷ In other words, rights-based approaches cannot tell us who the good parents are but they can point towards those who are unquestionably bad, namely those who do not meet their children’s general rights. However, this claim fails to give adequate moral weight to unfavourable circumstances that parents and their children may be facing. If families find themselves in a war zone, the fact that parents do not provide their children with shelter and adequate nutrition, to which they may have a general right, does not necessarily make them bad parents. More details are required before we could make this judgment (Did they have an opportunity to escape the war? Were there alternative caring arrangements available? and so on). Brighouse might be right if we view parents only as providers of goods and services; that is, if we choose to follow the child-centred assigned responsibility model. But if we realize that we have good reasons not to abstract children from their relationship with their parents then we also need to take into account the circumstances parents and children might find themselves facing *together*.

We can therefore conclude that the child-centred approach fails to provide us with an adequate account of what justice requires of parents. As the complete set of parental obligations it might prove too narrow while as the absolutely minimal set it might prove too wide. The extent to which parents meet their children’s abstract entitlements neither seems to correlate with them being good parents, nor with them being bad ones.

6. Context-dependency: Whose context?

Against the conclusion of the previous section some might wish to argue that while it may be the case that some of the parents’ obligations are specific to their relationship

⁶⁷ Harry Brighouse, “What Rights (If Any) Do Children Have?” in Archard and Macleod, *The Moral and Political Status of Children*, 35.

with their children, this is not so with respect to the narrower set of obligations that are a matter of *justice*. One reply would be to show that some such specific obligations (e.g. giving particular attention) plausibly fall within the purview of a principle of justice formulated in more general terms. This, however, must wait for my positive account and defence of such a principle in Chapter 4. Here I wish to pursue a different strategy and argue for the indispensability of the parent–child relationship also with respect to rights to goods and services that children are normally thought to have irrespective of that relationship.

Rights-talk often distinguishes between two different kinds of rights: liberty and welfare. Liberty rights concern the non-interference of others with one’s life. For example, my rights to life and bodily integrity entail that it is not morally permissible for others to kill or abuse me, physically or sexually. If children have any rights at all,⁶⁸ they surely have some such rights (notwithstanding the argument that children do not have *all* the liberty rights adults have). But advocates of children’s rights rarely stop there. Children, we are often told, also have welfare rights, that is, rights to be provided with certain goods and services promoting their welfare. Indeed, children cannot survive and develop without some ‘interference’ of adults in their lives. It is not controversial to therefore claim that children have (welfare) rights to shelter, adequate nutrition, healthcare and education. However, rights to goods and services (unlike liberty rights) cannot be accounted for in the abstract but depend on one’s social context.⁶⁹

The context-dependence of welfare rights has two main aspects. The previous section touched on the need for some institutional scheme (e.g. healthcare or education *system*) through which the relevant goods and services are to be delivered. “[I]t will be impossible to state *who* ought to do the providing or delivering, and who can be called

⁶⁸ For the view that they don’t, see Jan Narveson, *The Libertarian Idea* (Philadelphia: Temple University Press, 1988), Chapter 19; Hillel Steiner, *An Essay on Rights* (Oxford: Blackwell, 1994), 245-6. For some potential replies, see David Archard, “Children’s Rights,” in Edward N. Zalta (ed.), *Stanford Encyclopedia of Philosophy*, Summer 2011 edition (<http://plato.stanford.edu/archives/sum2011/entries/rights-children>), Section 1.

⁶⁹ This distinction corresponds to that of O’Neill’s, discussed above, between general imperfect and perfect obligations.

to account when deliveries are botched, or nothing is delivered, unless there are established institutions and well-defined special relationships.”⁷⁰ But perhaps more fundamentally, recourse to a specific social context is also required in order to state fully *what* ought to be provided or delivered.

Compare the right not to be tortured with the right to education. A right not to be tortured may be pretty well defined across different social contexts, and fully met, at least theoretically, absent an institutional framework. The case of a right to education is very different. We cannot tell whether or not the abstract right to education has been met if we do not know the child’s social context. This is because without reference to a specific social context it is not clear what the content of adequate education should include. The full specification of what a right to education implies has to rely on the actual characteristics of a given society – its geographical conditions, economic development, shared beliefs and practices, and so on.

Welfare rights thus require reference to a given social context before being fully specified and implemented. But *whose* social context are we talking about? With respect to adults the answer is quite straightforward. When we examine whether or not an adult’s welfare right has been met we refer to *that* adult’s social context which is determined, in turn, by the adult’s membership in a specific society. With children, the case is different. Their social context is normally determined by the location of their upbringing. However, this is not a place they choose for themselves but one that others, namely their parents, choose for them. Children’s social context may change if, for example, their parents decide to migrate or if the children are adopted overseas. But in all cases, whether the social context changes or remains constant, it is the *parents’* identity and actions that determine it. So it is the given parent–child relationship that determines the child’s social context which the full specification and implementation of his (welfare) rights must presuppose. Thus the relation between children’s rights and

⁷⁰ Onora O’Neill, “Women’s Rights: Whose Obligations?” in her *Bounds of Justice* (Cambridge: Cambridge University Press, 2000), 105; see also O’Neill, *Towards Justice and Virtue*, 128-41.

the parent–child relationship is quite the reverse from what the child-centred picture has initially suggested.

If this argument is sound, we can now see that the idea of a strictly child-centred assignment of parental responsibility is not only counterintuitive but also incoherent. According to that idea, we abstract children from their actual relationships, ask who can best meet their interests, and assign parental responsibility accordingly. But in order to answer that question we need to refer to the child’s social context which is determined by an already given parent–child relationship. In other words, assigning parental responsibilities in view of the child’s rights *must* presuppose the very same assignment of responsibilities it aims at determining. To be sure, this in itself does not tell against *reassigning* parental responsibility. Nonetheless I think it highlights the limits of the child-centred approach and of abstraction more generally.

7. Conclusion

It is commonsensical to think about what justice requires of parents in terms of the entitlements or rights of their children. Parents, it is often said, are there to serve their children’s interests. Pursuing this line of thought does offer some important insights. It is the fact that human beings are born incapable of meeting their immediate and developmental interests which initially opens the way for the parent–child relationship to be established. If we were entering the world as Adam did – “his body and mind in full possession... capable from the first instance of his being to provide for his own support and preservation”⁷¹ – we would not come to have parent–child relationships. Meeting the interests of children thus lies at the heart of our understanding of the parent–child relationship. Moreover, the interests of children are distinct from their parents’ and meeting them is not a strictly private family matter.

⁷¹ Locke, *Two Treatises*, 305.

However, I argue that the entitlements children may have, abstracted from their relationship with their parents, cannot fully account for the obligations of parents. Even if we could agree upon a plausible set of children's abstract entitlements, it would remain unclear why parents should be the ones primarily responsible for meeting them. Suggesting in response that those who can best meet those entitlements should become the parents would risk committing ourselves to mass redistribution of children. Still, a set of children's abstract entitlements cannot seem to escape either generating an implausibly narrow set of parental obligations, or presupposing a concrete social context and a given parent–child relationship. These shortcomings of the child-centred approach recommend taking the child's relational context more seriously and pave the way for introducing some non-child-centred considerations in formulating our account of justice in the family.

Chapter 2

Is the Personal Political?

For a start, then, it seems, we must supervise our storytellers. When they tell a good story, we must decide in favour of it; and when they tell a bad one, we must decide against it. We shall persuade nurses and mothers to tell children the approved stories, and tell them that shaping children's minds with stories is far more important than trying to shape their bodies with their hands. We must reject most of the stories they tell at the moment.

(Plato)¹

1. Introduction

The previous chapter stressed the significance of the relational context to the issue of justice in the family. Following this, I will now explore the bearings that political justice² may have on the issue.

The starting point for adopting such a perspective is the straightforward observation that the family is a major social institution. As such, it falls within the purview of a political conception of justice, the subject of which is the basic institutional structure of society. Can such a conception therefore account for what justice requires of parents? John Rawls's theory of justice offers us an opportunity to examine this question in depth.³ It proves to be fruitful ground not only because of its own merits as

¹ Plato, *The Republic*, trans. Tom Griffith, ed. G. R. F. Ferrari (Cambridge: Cambridge University Press, 2000), 61-2.

² The more familiar term is social justice. Since this chapter revolves around Rawls's account of justice I keep to his later terminology which refers to it as a political conception of justice (in short, political justice). Putting aside the other implications of this label, the *subject* of a political conception of justice in Rawls's sense is roughly the same as that of social justice.

³ Rawls's main relevant writings are *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1999); *Political Liberalism* (New York: Columbia University Press, 1999); "The Idea of Public Reason Revisited," *University of Chicago Law Review* 64 (1997): 765-807; and *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, MA: Harvard University Press, 2001). As far as possible, I treat these writings as offering a single unified theory. Where revisions of his views have bearings on the issues in question here, I point them out.

a highly complex theory formulated specifically for the basic structure of society, but also due to its being the focus of feminist critiques – most notably Susan Okin’s – which seek to develop and directly apply Rawls’s theory to issues of justice concerning the family. The thesis advanced in this chapter is that the attempts to account for what justice requires of parents exclusively in terms of a political conception of justice are unsuccessful. Nonetheless, an examination of these attempts points the way for further enquiry into justice in the family and its relation to the broader setting of political justice.

The argument of this chapter proceeds as follows. I start with a presentation of Rawls’s own treatment of the family within his theory of justice. This account, as we shall see, is quite puzzling. There is an obvious tension between Rawls’s inclusion of the family in the basic structure of society, and his prescription that the principles of political justice should be applied to the family in a way not different to associations that are not part of this structure. To alleviate this tension the third section of the chapter introduces the distinction between justice *of* the family and justice *in* the family. This gives rise to two different views on the relation between political justice and justice in the family. The first – *the constraints view* – suggests that justice in the family is encapsulated within the constraints political justice imposes on the internal life of families. I find this view problematic and point out the need for a conception of family justice addressing the internal life of families directly. This leads to considering *the mirror view*, according to which the principles of family justice should mirror those of political justice. In Section 4 I examine three arguments for holding such a view. Although I ultimately reject them and thus lay down the grounds for keeping the personal and political domains distinct from each other, those arguments allow us to note the potential of a local conception of family justice to accommodate much of the feminist critique made under the slogan “the personal is political.” Section 5 concludes by setting the agenda for further enquiry.

2. Rawls's puzzling account

Rawls famously argued that the primary subject of justice is the basic structure of society, by which he meant “the way in which the major social institutions fit together into one system, and how they assign fundamental rights and duties and shape the division of advantages that arises through social cooperation.”⁴ From the very start Rawls held the family to be one such major social institution and therefore a part of the basic structure of society to which the principles of justice apply.⁵ This seems straightforward in light of the reason Rawls provides for viewing the basic structure as the primary site of justice, namely that its effects are “so profound and pervasive, and present from birth.”⁶ At least with respect to children, the family surely has profound and pervasive effects that are indeed present from birth. Thus we have a good-enough reason for including the family on the list of major social institutions that together form the basic structure of society.

In later writings, however, Rawls has elaborated on a deeper rationale, which was only implicit at first, for including the family as part of the basic structure of society. Not only does the family happen to have profound effects on people's lives; it is an integral and necessary component of the very idea of a system of social cooperation over time underlying our understanding of what political society is. As Rawls explains,

The family is part of the basic structure, since one of its main roles is to be the basis of the orderly production and reproduction of society and its culture from one generation to the next... Thus reproductive labour is socially necessary labour. Accepting this, a central role of the family is to arrange in a reasonable and effective way the raising of and caring for children, ensuring their moral development and education into the wider culture. Citizens must have a sense of justice and the political virtues that support political and social institutions. The

⁴ Rawls, *Political Liberalism*, 258. See also *Theory*, 6; *Justice as Fairness*, 10.

⁵ See the references in the previous note. While in *Theory* Rawls was referring to the monogamous family, in *Political Liberalism* it is the “nature of the family” that is included in the basic structure. This allowed Rawls to be more inclusive towards ‘less orthodox’ family forms such as those headed by same-sex couples. See “Public Reason Revisited,” 779; *Justice as Fairness*, 163.

⁶ *Theory*, 82; see also at 7.

family must ensure the nurturing and development of such citizens in appropriate number to maintain an enduring society.⁷

So it is the family as a site of childrearing – and especially of moral development – that is part of the basic structure.⁸ Since the basic structure “lies entirely within the domain of the political”⁹ to which Rawls’s conception of justice is to apply, it is only natural to expect that issues of justice concerning childrearing could be addressed by reference to this conception. Yet this is precisely what Rawls seems to *reject* in his last and most elaborate writings on the family.¹⁰ But before presenting Rawls’s later formulation it is important to note a certain shift that has occurred over the years in his picture of the family, which rules out a potential explanation for that rejection.

Rawls’s initial portrayal of the family was to a large extent an idealized one. In *A Theory of Justice* the family is taken to display altruistic feelings, fraternity and love among its members, especially between parents and children. We are assumed to be more reluctant to take great risks for our descendants than for ourselves.¹¹ We are told that the family, “in its ideal conception and often in practice,” is where fraternity is displayed by its members not wishing to gain, “unless they can do so in ways that further the interests of the rest.”¹² And “we may suppose” that parents love their children and that the latter in turn come to love and trust their parents,¹³ an assumption that is crucial to Rawls’s account of children’s moral development, and specifically to its first stage: the morality of authority. All this might create the impression that family-related issues of justice are far from urgent, and this was perhaps Rawls’s initial

⁷ Rawls, “Public Reason Revisited,” 788. The family had already played a major role in Rawls’s account of moral development through which persons acquire a sense of justice; see *Theory*, Chapter 8, especially Sections 70-1. Yet it was only in the late text cited here that he explicitly identified this role as a reason for including the family as part of the basic structure.

⁸ This allows us to better understand what is meant by the “nature of the family” (see note 5 above).

⁹ Rawls, *Political Liberalism*, xlii.

¹⁰ Rawls, “Public Reason Revisited,” Section 5; *Justice as Fairness*, Section 50.

¹¹ Rawls, *Theory*, 146.

¹² *Ibid.*, 90.

¹³ *Ibid.*, 405.

intuition: That in the presence of altruism, love and care, figuring out what the principles of justice require with respect to family life is redundant.¹⁴

However, in *Political Liberalism* the portrayal of the family is already much more ambivalent. Although the familial is distinguished from the political domain by being affectional,¹⁵ the text does acknowledge the existence of “problems of gender and the family” (if only by way of mentioning them not being discussed in *Theory and Political Liberalism*¹⁶) as well as the fact that members of families do need protection from other family members – “wives from their husbands, children from their parents.”¹⁷ By the time his last writings on the family were published Rawls had endorsed at least some of the feminist criticisms and related policy proposals, most notably those of Susan Okin in her *Justice, Gender, and the Family*. The potential risk of children being abused or neglected by parents was also recognized as well as other injustices that “bear harshly” on children.¹⁸ So, in contrast to his early view, Rawls in his later writings does not assume that the family is just because it is regulated by altruism and love.

I have already mentioned Rawls’s rejection of the idea that his political principles of justice should govern parent–child relationships. “These principles,” he says, “do not inform us how to raise our children, and we are not required to treat our children in accordance with political principles.”¹⁹ Instead we are offered an analogy between the family and other associations to explain how these principles apply to the former:

The principles of justice are to apply directly to [the basic] structure, but are not to apply directly to the internal life of the many associations within it, the family among them... Much the same question arises in regard to all associations, whether they be churches or universities, professional or scientific associations, business firms or labor unions. *The family is not peculiar in this respect.*

¹⁴ Following from this family picture, a more formal obstacle for tackling issues of justice in the family was Rawls’s characterization of the parties in the original position as heads of families. This had the consequence of making the family “opaque to claims of justice,” as Jane English argued in her “Justice Between Generations,” *Philosophical Studies* 31 (1977): 91-104.

¹⁵ Rawls, *Political Liberalism*, 137.

¹⁶ *Ibid.*, xxxi.

¹⁷ *Ibid.*, 221n.

¹⁸ Rawls, “Public Reason Revisited,” 790-1; see also *Justice as Fairness*, 165-7.

¹⁹ Rawls, “Public Reason Revisited,” 790; see also *Justice as Fairness*, 165.

Political principles do not apply directly to [the family's] internal life, but they do impose essential constraints on the family as an institution and so guarantee the basic rights and liberties and the freedom and opportunities of all its members. This they do... by specifying the basic rights of equal citizens who are members of families. The family as part of the basic structure cannot violate these freedoms.²⁰

Just as the difference principle does not order a church's hierarchy of offices, neither does it determine the treatment of children by their parents.²¹ It is not for the principles of political justice to determine the ways associations are internally organized. Yet members of associations are also citizens and as such they enjoy basic rights – determined by the principles of political justice – wherever they go. Thus, churches cannot burn heretics, universities cannot discriminate between students based on the colour of their skin, and parents cannot abuse children. The principles of justice serving as constraints on the internal life of associations prevent this from happening. Rawls seems to think this is enough to meet the feminist critique of the family and to achieve a viable liberal account of equal justice for women and for children as future citizens.²²

However, this account of how the principles of justice apply to the family as constraints, and the analogy with other associations, displays an obvious tension with Rawls's other claim that the family is part of the basic structure. On the one hand the principles of justice do apply *directly* to the basic structure, one aspect of which is childrearing in families. On the other hand, we are told, the internal life of families including childrearing is only *indirectly* constrained by these principles of justice.²³ Furthermore, the analogy with other associations, according to which the relation between the principles of justice and the internal life of the family is not a peculiar one, does not seem to square with the fact that, while the family, according to Rawls, is part of the basic structure, universities and churches are not. In the absence of further justification, it seems that the family *should* be peculiar compared to churches and

²⁰ Rawls, "Public Reason Revisited," 788-9; *Justice as Fairness*, 163-4; emphasis added. See also "Public Reason Revisited," 790: "The principles of justice impose constraints on the family on behalf of children who as society's future citizens have basic rights as such."

²¹ Rawls, *Justice as Fairness*, 10n, 164.

²² See Rawls, "Public Reason Revisited," 787n, 793-4; *Justice as Fairness*, 167-8.

²³ Rawls, *Justice as Fairness*, 10.

universities. Otherwise, what other meaning can its inclusion in the basic structure have?

The tension in Rawls's account can be reconstructed as follows:

- (I) The principles of political justice apply directly to the basic structure of society.
- (II) Either the family is part of the basic structure or it is not part of the basic structure.
- (III) If it is, then principles of political justice should apply directly to the family (as part of the basic structure).
- (IV) If it is not, then principles of justice should apply to the family in the same way they apply to other associations, i.e. only indirectly as constraints.
- (V) The family is part of the basic structure.
- (VI) Principles of political justice should apply directly to the family (from 1, 3, 5);

However, Rawls holds that

- (VII) The principles of political justice only serve as constraints on its internal life.

This has led Susan Okin to declare that there is no way of reconciling Rawls's two positions as stated in (V) and (VII).²⁴ I want to suggest that despite the obvious tension between its components, Okin was too quick in dismissing this account. In what follows I try to make sense of it and examine its implications for justice between parents and children.

3. Justice of the family and justice in the family

The key distinctions for ameliorating the potential conflict in Rawls's account are, I argue, that between justice *of* the family and justice *in* the family, and that between political justice and family (or, more generally, local) justice. The latter distinction is

²⁴ Susan Moller Okin, "Justice and Gender: An Unfinished Debate," *Fordham Law Review* 72 (2004): 1537-67, at 1566.

relevant to the discussion of justice *in* the family so I start with the former to clarify its meaning.

According to Véronique Munoz-Dardé's interpretation, which I follow here, the issue of justice *in* the family concerns the "division of labour and, more generally, the application of principles of rights and justice within this institution," while justice *of* the family deals with "the question of whether the family should exist from the point of view of justice, and which form, or forms, if any, it would take."²⁵

If Rawls's political conception of justice applies directly to the basic structure, i.e. to the way in which the major social institutions fit together into one system, and if the family is one such major social institution, then this conception does apply directly to the issue of how the family fits in this system of social cooperation. This is the issue of justice *of* the family. When Rawls says that the principles of justice apply to the basic structure, he emphasizes that it is to the major social institutions "taken together as one scheme."²⁶ This scheme *as a whole* is supposed to fulfil the principles of justice and therefore it is in light of these principles that we are to choose among "various social arrangements."²⁷ The family is one such social arrangement which, from the perspective of political justice, aims at the upbringing and, more specifically, the moral development of future citizens. But this is only one possible arrangement; others may also be considered for this purpose, depending on their prospective ability to dovetail with the other major social institutions into one scheme that as a whole is meant to fulfil the principles of political justice. Rawls had acknowledged this possibility in *Theory* although he never explored it further.²⁸

²⁵ Véronique Munoz-Dardé, "Rawls, Justice in the Family and Justice of the Family," *Philosophical Quarterly* 48 (1998): 335-52, at 335. See also Rawls, *Political Liberalism*, xxxi, where the matters of justice of and in the family are mentioned, but not elaborated to explain what exactly they stand for.

²⁶ Rawls, *Theory*, 6. See also *Political Liberalism*, xliin ("unified scheme"); "Public Reason Revisited," 791 ("single social system"); *Justice as Fairness*, 10 ("social framework").

²⁷ Rawls, *Theory*, 4.

²⁸ *Ibid.*, 405: "In a broader inquiry the institution of the family might be questioned, and other arrangements might indeed prove to be preferable." Nearly thirty years after, Rawls wrote in reference to the tensions between familial upbringing and the prospects of achieving equality of opportunity: "I cannot pursue these complexities here, but assume that as children we grow up in a small intimate group in

The inclusion of this issue within the scope of political justice makes clear that the family is not a brute fact of nature, and acknowledges the important feminist claim that the state is present in the family from the start by defining which forms of upbringing are allowed, and which structures are recognized as families.²⁹ It also distinguishes between the family as part of the basic structure, as distinct from associations such as universities and churches which are not part of this framework. There can therefore be no issue of the justice *of* churches or universities as they operate *within* the framework of major social institutions, while the existence of the family as *part* of this framework is a matter to which a political conception of justice applies. I will not pursue this theme any further since my main concern here is with what happens within families.³⁰

This brings us to the different issue of justice *in* the family, i.e. the application of principles of justice between family members. Okin thought the inclusion of the family as part of the basic structure tells us that its internal life should be ordered according to the principles of political justice:

These principles are intended to apply to the basic structure of society... Whenever the basic institutions have *within them* differences in authority, in responsibility, or in the distribution of resources such as wealth or leisure, the second principle requires that these differences must be to the greatest benefit of the least advantaged...³¹

which elders (normally parents) have a certain moral and social authority" (Rawls, "Public Reason Revisited," 788). See also note 30 below.

²⁹ See Frances E. Olsen, "The Myth of State Intervention in the Family," *University of Michigan Journal of Law Reform* 18 (1985): 835-64; Susan Moller Okin, *Justice, Gender, and the Family* (New York: basic Books, 1989), 129-31; Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000), 252-64.

³⁰ For an examination of the justice *of* the family, see Véronique Munoz-Dardé, "Is the Family to Be Abolished Then?" *Proceedings of the Aristotelian Society* 94 (1999): 37-56. She contrasts the family with a well-run state orphanage – something like a generalized boarding school – and asks which of the two models of upbringing is preferable in light of Rawls's conception of political justice. Munoz-Dardé argues that the alternative model is likely to threaten individual liberty and thus, given the lexical priority of Rawls's first principle, the family is to be preferred as the site of upbringing despite the obstacles it imposes on achieving fair equality of opportunity. For a related justification of the family based on the need for cultural membership, see Ron Mallon, "Political Liberalism, Cultural Membership, and the Family," *Social Theory and Practice* 25 (1999): 271-97.

³¹ Okin, *Justice, Gender, and the Family*, 93; emphasis added. See also her "Political Liberalism, Justice, and Gender," *Ethics* 105 (1994): 23-43, where she says that since families are part of the basic structure,

But once we distinguish between the issues of justice of and in the family and recognize that the inclusion of the family in the basic structure refers to the application of political principles to the justice *of* the family, we have no reason to assume that the same principles also apply to justice *in* the family. To be sure, one may argue that if the political conception of justice applies to the basic structure then its principles should also apply to the internal life of families. Yet this is very different from saying that the inclusion of the family in the basic structure *means* that the political conception of justice applies to the internal life of families. I will return to the examination of possible arguments of this sort in Section 4, but first we need to consider a different way of tackling the issue of justice in the family.

Recall that Rawls said that the principles of political justice apply indirectly, as constraints, to the internal life of families. They protect the basic claims of citizens wherever they are, and thus constrain the internal life of the associations of which the citizens are members. In this respect, Rawls thought, the family is not peculiar – citizens are to be protected in their family as much as they are in their church or university. Now, one might think this concludes the issue of justice in the family, as Munoz-Dardé suggests:

Let us assume for the sake of simplicity that we have no argument with Rawls' principles of justice, and that we are only worried about their capacity to address injustices within the family. It would then be enough to be able to show that these principles apply within the family (that is, that in matters of justice members of families are treated in exactly the same way as members of any other small group or association)... This is particularly relevant to envisaging the distribution of the burdens of care towards dependent members of families... Because rights apply to all family members in the very same manner as they apply to members of churches, of universities and of any other association, work within the family is

political values “surely apply within them” (ibid., 27). She held to this position even after Rawls had explicitly rejected the application of his political conception to the internal life of families; see Okin “Justice and Gender: An Unfinished Debate,” 1564; “‘Forty Acres and a Mule’ for Women: Rawls and Feminism,” *Politics, Philosophy & Economics* 4 (2005): 233-48, at 246.

submitted to no more and no fewer legal constraints than in any other free association.³²

Call this *the constraints view* of justice in the family. Contrary to this view I want to argue that regarding the family in the way we regard other associations is not enough to fully address the issue of justice in the family.

First, and most importantly for our concerns, the constraints view leaves largely undetermined the obligations of justice that parents have to their children. It may be sufficient to specify the demands of *political* justice that apply, inter alia, between parents and children; thus ‘honour killings’ of daughters by their fathers are prohibited since they violate the basic rights of daughters as citizens (whatever else they violate). But this view does not provide us with an account of justice which tells us what parents are required to distribute to their children and how. Nor could it account for parental conduct that does not necessarily violate the basic rights of children *as citizens* but is, nonetheless, conduct which we would intuitively consider to be unjust. For example, not allowing enough opportunities for play may be a case of neglect and as such an injustice even if it does not violate the citizenship rights of the child. Not meeting some necessary requirement for securing the child’s affiliation with his minority cultural group may be another example. To sum up this point, the constraints view does not tell us what the *specific* demands of justice in childrearing are.

In light of this problem we can turn to the second distinction mentioned at the beginning of this section, that between conceptions of *political* and *family* justice. A political conception of justice offers principles that apply to the basic structure and from the perspective of which the justice *of* the family is examined. Those principles also impose constraints on the internal life of families and in this respect the political conception also has some bearings on justice *in* the family. However, for Rawls it does not follow that justice in the family is therefore determined, for the most part, by that political conception:

³² Munoz-Dardé, “Rawls, Justice in the Family and Justice of the Family,” 348-9.

Here those [political] principles are out of place. Surely parents must follow some conception of justice (or fairness) and due respect with regard to their children, but, within certain limits, this is not for political principles to prescribe.³³

This is made clear in Rawls's distinction between political and local justice. The institutions of the basic structure and the associations within it "are each governed by distinct principles in view of their different aims and purposes and their peculiar nature and special requirements." These are principles of local justice "to be followed directly by associations and institutions within the basic structure."³⁴ The suitable principles of local justice are constrained but not determined uniquely by the principles of political justice. So if we are interested in what justice specifically requires of parents we need to look for the relevant conception of local justice, that is, family justice. The constraints view of justice in the family falls short of providing the required conception of family justice.

Furthermore, the relation offered by the constraints view between the political framework and what happens in families seems problematic. The cornerstone of this view is the analogy between families and other associations which, from the perspective of political justice, can be considered voluntary. As long as the interests that members of associations have as citizens are protected by legal constraints and fair background conditions, the authority of associations over their members can be taken as freely accepted and in this sense voluntary.³⁵ Since the membership in associations such as churches and universities is a voluntary matter the way their internal life is ordered – e.g. the hierarchy of offices and the division of labour among their members – falls within the scope of the basic liberties of citizens and is of no further concern from a political point of view. One may argue along these lines that insofar as the rights of

³³ Rawls, "Public Reason Revisited," 790; *Justice as Fairness*, 165.

³⁴ Rawls, *Justice as Fairness*, 11-12; see also at 164.

³⁵ As Rawls makes clear, this does not mean that membership in associations is the result of free choice independent of any prior loyalties and commitments, but that from a political point of view, given fair background conditions, we impose these loyalties and commitments on ourselves; see *Political Liberalism*, 221-2.

women as citizens are protected, their membership in families displaying gender-based inequalities is also a voluntary matter and therefore of no concern to political justice.³⁶ This is a deeply contentious line of argument but we can note from the outset that, whatever its merits, it is not applicable to the status of children in the family. There is no way in which a case parallel to the voluntary membership in churches and universities can be made with respect to the membership of children in their families. As Martha Nussbaum pointed out, children are practically hostages to their families, surely in the earliest stages in life. Children's treatment by their parents has profound effects on their lives and their parents' authority over them cannot be said to be freely accepted.³⁷

A different but related problem is that, contrary to what happens in voluntary associations, there is a direct political interest in what happens in families. As has already been observed, there is no such issue of justice *of* the church or justice *of* the university and this allows the state to remain relatively uninterested in justice *in* the church or *in* the university (as long as it falls within the constraints imposed by political justice). But this is not the case with respect to the family. The issue of the upbringing and moral development of future citizens was recognized as a matter of political justice from the start and therefore raised the question of the justice *of* the family. And although this left the justice *in* the family to be mainly determined by a conception of family justice, the political interest in childrearing remains. There is a political interest to ensure justice in the family as the site where future citizens are reared and develop their moral capacities. An analogous political interest in the justice in the church or university does not exist.³⁸

³⁶ Rawls suggests this possibility, in a somewhat apologetic tone, in "Public Reason Revisited," 792: "a liberal conception of justice may have to allow for some traditional gendered division of labor within families – assume, say, that this division is based on religion – provided it is fully voluntary and does not result from or lead to injustice."

³⁷ Martha C. Nussbaum, "Rawls and Feminism," in Samuel Freeman (ed.), *The Cambridge Companion to Rawls* (Cambridge: Cambridge University Press, 2003), 504. Matthew Clayton also makes this point in arguing for the applicability of principles of justice and legitimacy to the parent–child relationship. I examine his argument in Section 4 of this chapter.

³⁸ There might be a political interest in justice in the university if higher education is conceived as being continuous with primary schooling in cultivating democratic citizenship. Yet even if we grant this, higher education still seems to have a different purpose – over and above the threshold of *necessary* virtues and

The first and most significant problem with the constraints view was that it leaves the issue of justice in the family largely undetermined. We saw that this calls for a conception of family justice to address what justice specifically requires of parents. A different problem with the constraints view was the relation it offers between political justice and justice in the family, based on the analogy between families and voluntary associations. The revealed disanalogies concerning membership in voluntary associations and children's membership in families suggest that, from the political perspective, justice in the family is of deeper concern than is suggested by the constraints view.³⁹ This may lead to a consideration of the enforcement of justice in the family, once we have a conception of family justice at hand.

4. "The personal is political": Three arguments

The distinction between political justice and family justice tells us that the two conceptions are different in scope: while the focus of political justice is the basic structure as a unified institutional scheme, it is for a conception of family justice to regulate the internal life of families. But this distinction does not tell us what the substantive content of the two conceptions is; neither does it assert that their content is necessarily different. This leaves open the possibility of another relation between political justice and justice in the family according to which the latter needs to mirror the former. Call this *the mirror view* of justice in the family. In this section I examine three arguments for adopting this view, all of which can be regarded as variants of 'the personal is political' slogan. None of them claim the more private domain is identical with the political one. But they aim to provide reasons why there should be no substantive distinction content-wise between the political conception of justice and the

skills of citizenship. For elaboration on this issue, see Amy Gutmann, *Democratic Education* (Princeton, NJ: Princeton University Press, 1987), Chapter 6.

³⁹ Quite surprisingly those disanalogies are overlooked by Munoz-Dardé. This might be due to her focusing mainly on feminist criticisms and on the implications of justice in the family for gender issues.

more private one of family justice. The first two suggest that the personal is political because of the former's effects on the latter, whereas the third implies that the personal is political in virtue of sharing the same relevant features.

A. The 'school of justice' argument

The first argument builds on the role the family plays in children's moral development and specifically in their acquiring a sense of justice. This role, let us recall, is a major factor in considering the justice *of* the family, how it fits together with the other social institutions in implementing the principles of political justice. From here the argument proceeds in two steps: first, that in order to realize the justice *of* the family we must ensure that justice *in* the family obtains and, second, that for children to acquire the required sense of justice, families must mirror the conception of justice that regulates the larger society. The two steps are observed in the following text from Okin:

[Step 1:] families must be just because of the vast influence that they have on the moral development of children. The family is the primary institution of formative moral development. [Step 2:] And the structure and practices of the family must parallel those of the larger society if the sense of justice is to be fostered and maintained.⁴⁰

We may begin by questioning the first clause. Is it indeed the case that families *must* be just for children to develop moral personhood? Surely families might be unjust to such an extreme that the neglect or abuse of children jeopardizes their very physical, mental, emotional and moral capacities. This I take to be indisputable. But what about 'moderately' unjust families? To support her claim that unjust families "are not suitable training grounds for just citizens," Okin, in a later work, cites two empirical studies.⁴¹ Commenting on the first study, which found that unequal divisions of labour are

⁴⁰ Okin, *Justice, Gender, and the Family*, 22. The first step of the argument is also made, with reference to Rawls, in Deborah Kearns, "A Theory of Justice – and Love; Rawls on the Family," *Politics* (Australia) 18 (1983): 36-42. However, unlike Okin, Kearns doubts the potential of Rawls's principles to address justice in the family.

⁴¹ Okin, "Political Liberalism, Justice, and Gender," 35-7.

reproduced and even exacerbated from one family generation to the next, Okin rhetorically asks whether gendered families are a good place to become just or, alternatively, “a place where people absorb the message that they have different entitlements and responsibilities, based on a morally irrelevant contingency – their sex?”⁴² However, the evidence cited from the second study replaces the rhetorical question with a real one. As part of examining women’s and girl’s perceptions of sex-inequality in traditional hierarchical families, it was found that almost 80 per cent of the responding women and girls thought it *unfair* for a husband to dictate his wife’s choices.⁴³ Okin does not seem to be aware that this evidence undermines her case. It shows, in fact, that despite their gendered familial environment, the women and girls who were interviewed for that study did *not* “absorb the message” of different entitlements. Quite the contrary, they were able to recognize the unfairness of the power relations in their own families, and they could not have done this without having a sense of justice.⁴⁴ One might go even further and suggest not only that unjust families do not hinder the development of a sense of justice but that they have the potential to foster it by making the reality of injustice clear and present.⁴⁵ And still, although it might be true in some particular cases, it seems far-fetched to generalize this last point. Even if true, it would be absurd to opt for *de facto* injustice to promote a (mere) sense of justice.

Okin’s claim that the development of a sense of justice requires there to be justice in the family seems somewhat overstated but plausible. It is probably *not* the case that justice in their family is a *necessary* precondition for children to develop moral personhood. But if, for instance, Rawls’s understanding of moral psychology is valid and children’s initial stages of moral development depend on their attachment to parental

⁴² Ibid., 36.

⁴³ See *ibid.*, 37.

⁴⁴ 93 per cent of them also thought the wife should acquiesce (*ibid.*), but in light of the former finding this must be taken as a pragmatic rather than moral standpoint.

⁴⁵ Okin acknowledges this possibility in passing: “At least some of us who have much concern with justice – and with justice between the sexes in particular – have come to that concern in part through having grown up in unjust families” (*ibid.*, 38).

figures from whom they take example and receive guidance,⁴⁶ then parental conduct probably does affect the prospects of children acquiring a sense of justice. If we are interested in citizens having a sense of justice, it seems we should not remain uninterested in justice in families.

While the first step in the ‘school of justice’ argument is plausible, the second seems unwarranted. As far as I am aware, in none of her writings does Okin provide any reasoning to support her move from the first step of the argument to the second. She focuses her efforts on establishing the claim made in step one, that families need to be internally just for children to develop a sense of justice; but once this is ascertained she automatically concludes that families need to be internally ordered and regulated by the same *political* principles applying to the larger society.⁴⁷ When she asks why political theorists “seem so queasy about the idea that families should be internally arranged in accordance with principles of justice,” Rawls is immediately referred to as saying that “his principles of justice are *political* ones and therefore not applicable to the internal life of families.”⁴⁸ But the view that it is not for political principles of justice to order the internal life of families does not entail that families are beyond the reach of justice.⁴⁹ It only tells us, as we have already seen, that we need to look for a different conception of justice to apply to the internal life of families. The school of justice argument works only if we operate under the assumption that there is only one conception of justice, the principles of which apply everywhere.⁵⁰ If this is the case then once we affirm the need for the family to be internally just (in order to cultivate a sense of justice in children), we

⁴⁶ Rawls, *Theory*, Chapter 8, especially Sections 70-2.

⁴⁷ See her discussions of this issue in Okin, *Justice, Gender, and the Family*, 17-23, 99-100; “*Political Liberalism, Justice, and Gender*,” 32-9; “Justice and Gender: An Unfinished Debate,” 1563-7; “‘Forty Acres and a Mule’ for Women,” 241-3, 245-6.

⁴⁸ Okin “‘Forty Acres and a Mule’ for Women,” 245; emphasis in original.

⁴⁹ Okin’s conflation of the two views is also pointed out in Joshua Cohen, “A Matter of Demolition?” in Debra Satz and Rob Reich (eds.), *Toward a Humanist Justice: The Political Philosophy of Susan Moller Okin* (Oxford: Oxford University Press, 2009), 49n.

⁵⁰ An assumption which Rawls explicitly denies with respect to his own conception of justice – the same conception Okin wants to apply to the family: “Justice as fairness is a political, not a general conception of justice: it applies first to the basic structure and sees these other questions of local justice and also questions of global justice... as calling for separate consideration on their merits” (*Justice as Fairness*, 11; see also *Political Liberalism*, 261).

also commit ourselves to applying the same principles of justice both to the family and wider society. However, if we allow for different conceptions of justice to apply to different institutions, associations and relationships, then in order for families to be internally just they need to accord with a conception of *family* justice. And we have no reason to assume in advance that this will not be enough for children to start developing a sense of justice.⁵¹ Once we distinguish between conceptions of political and family justice, a justification for step two in the argument is found wanting. We can accept the first step calling for justice in the family without implying that this has to mirror political justice.

B. The argument from congruence

The school of justice argument does not lend support to the mirror view itself. A justification for why a family conception of justice needs to mirror the political conception is still required. Such a justification might be offered by the argument from congruence to which I now turn. According to this argument a conceptual split between the political and non-political domains of a person's life is practically dubious.⁵² While we can perhaps distinguish between the two domains, incongruence between the two is not sustainable in practice. This is because persons cannot have a split sense of self. If persons operate in their daily non-political lives in a way that assumes a particular conception of the person they cannot just put it aside when they enter the political domain which, in turn, assumes a different conception. The non-political domain, which for most citizens is much larger in scope and intensity, is bound to shape their sense of

⁵¹ This is demonstrated with great force in S. A. Lloyd, "Family Justice and Social Justice," *Pacific Philosophical Quarterly* 75 (1994): 353-71, and "Situating a Feminist Criticism of John Rawls's *Political Liberalism*," *Loyola of Los Angeles Law Review* 28 (1995): 1319-44, by examining different divisions of labour in families that do not conform to Okin's comprehensive liberalism and yet display some conception of justice that may sustain the development of a sense of justice in children. On this point, see also Stephen De Wijze, "The Family and Political Justice – The Case for Political Liberalisms," *Journal of Ethics* 4 (2000): 257-81, at 278-9.

⁵² See Susan Moller Okin, review of *Political Liberalism* by John Rawls, *American Political Science Review* 87 (1993): 1010-11, at 1011; "Political Liberalism, Justice, and Gender," 28-30; "Justice and Gender: An Unfinished Debate," 1561-2.

self to such an extent that it will affect their political self-image. Moreover, the unsustainability of this split will also have profound effects on how persons are treated by others:

It is exceedingly difficult to see how one could both hold and practice (in one's personal, familial, and associational life) the belief that women or blacks, say, are naturally inferior without its seriously affecting one's capacity to relate (politically) to such people as citizens "free and equal" with oneself.⁵³

Thus, if we want people to be able to think of themselves, act and treat others in the political domain as free and equal citizens, it requires us also to regulate the (most influential) non-political spheres of their lives in a way congruent to the political order. Otherwise we would end up with either 'schizophrenic' citizens or, more likely, with no political justice.⁵⁴

What should we make of this argument? We can begin by pointing out that the conclusion of the argument does not seem to square with the broader Rawlsian framework. Okin thought that the logical conclusion of consistently applying Rawls's original position was liberalized families. Including gender in the personal characteristics of which the parties are ignorant calls for reform of society's gendered structure and specifically in traditional family roles.⁵⁵ In response, some have argued that the parties have an interest in protecting their basic liberties and, following that, will allow for non-liberal families to exist in society, being free to practise their religion.⁵⁶ Whatever the

⁵³ Okin, "*Political Liberalism, Justice, and Gender*," 29n.

⁵⁴ This argument against the 'split' between different perspectives is to be distinguished from arguments against another 'split' in Rawls's (and Rawlsian) theory. Okin doubts the possibility of holding incongruent perspectives as, say, citizens and parents. The other kind of argument questions the logic of confining one's concerns from one such perspective primarily to one sphere of action, i.e. compliance with the basic institutional structure as opposed to interpersonal conduct. See G. A. Cohen, "Where the Action Is: On the Site of Distributive Justice," *Philosophy and Public Affairs* 26 (1997): 3-30; Liam B. Murphy, "Institutions and the Demands of Justice," *Philosophy and Public Affairs* 27 (1999): 251-91. See also Samuel Scheffler, "Egalitarian Liberalism as Moral Pluralism," *Aristotelian Society Supplementary Volume* 79 (2005): 229-53, for distinction between the division of moral labour and institutional division of labour which roughly correspond to those two splits.

⁵⁵ Okin, *Justice, Gender, and the Family*, 102-9.

⁵⁶ Lloyd, "Situating a Feminist Criticism of John Rawls's *Political Liberalism*," 1328; Munoz-Dardé, "Rawls, Justice in the Family and Justice of the Family," 346-7.

case, it is important to note that if Okin's argument from congruence is right then it seems to present a much graver dilemma to Rawls than to Okin. If the parties in the original position do opt for liberalized families then it is difficult to see how, in the second stage of Rawls's argument, when we are to examine the stability of the conception of justice that has been arrived at, this decision could enjoy an overlapping consensus of the reasonable comprehensive doctrines present in society. However, if the parties in the original position do not opt for liberalized families then Rawls faces a different challenge to stability as, following Okin's argument, in the absence of a liberal non-political domain the political conception of the person as free and equal citizen is unsustainable.

So a Rawlsian approach does not in itself solve the issue we face here. We need to judge the argument from congruence on its own merits. To do this we should pay attention to the sort of examples given by Okin in support of her argument. One such example is that of a religion that, based on a God-given hierarchy of the sexes, treats women as not very different from slaves. Another example concerns a religious group promulgating the metaphysical view that women have the souls of pigs.⁵⁷ These examples illustrate a deep and clear conflict between the political conception of the person as free and equal citizen and the non-political conception of the female person as less than fully human. Now, it makes sense to claim, as does Okin, that if people are socialized from their very early childhood in a way that stands in such stark conflict with the role they are expected to assume as citizens, then one of these positions will have to be let go. We may also concede that it is more likely to be that of citizenship. The non-political domain is more extensive and intensive in one's life than the political, and it is likely to shape one's sense of self to a much greater extent.

Okin is therefore right to point out that the distinction between the political and the non-political does not give the latter carte blanche. It is not the case that the establishment of a political conception of justice means that in the non-political

⁵⁷ See, respectively, Okin, "*Political Liberalism*, Justice, and Gender," 29-30; "Justice and Gender: An Unfinished Debate," 1562.

anything goes. However we should keep in mind that here we are not interested in the potential conflict between the political and the non-political as such, but in the narrower issue of the potential conflict or incongruence between political and non-political conceptions of *justice*. And although we are yet to argue for a specific conception of family justice it is already possible to claim that it is very unlikely to be anything like the doctrines that Okin contrasts with the political conception of justice. Any conception of justice will probably rule out practices that humiliate persons, damage their self-respect and degrade them to subhuman levels. How can a conception of family justice consider some of the family members to have the moral status of pigs? Doesn't that very conception immediately mutate into something other than one referring to a (human) family? The same seems to hold for conceptions that treat women in a way that echoes Aristotle's account of natural slaves. If a conception of family justice is most likely to consider all members of the family as fully (or potentially fully) human, we need not worry about facing a conflict between the political and family conceptions of justice as deep and clear as the ones appearing in Okin's examples. Yet even if such extreme cases of conflict are ruled out in advance, what about moderate cases of incongruence? Is a 'split' between moderately incongruent conceptions of justice, applying to different domains, also unsustainable?

Okin doubts whether "real human beings" can follow this "conceptual splitting" and think of themselves in this way.⁵⁸ She seems to assume that a coherent and continuous sense of self is required across the different spheres of one's life. If that is indeed the case then incongruence between non-political and political conceptions cannot be maintained and we therefore have a reason to move towards the mirror view of justice in the family. However, our everyday experience provides quite a lot of evidence to the contrary. As we move across different spheres of our lives we assume different roles, and our responsibilities and entitlements with regard to each often do not mirror the others. We do not have any reason to assume that if someone thinks highly of herself as an academic, she will also view herself as deserving more than an

⁵⁸ Okin, review of Rawls's *Political Liberalism*, 1011.

equal citizenship. And we may doubt whether overseas students think of themselves as less than equal *students* merely due to the fact they are not citizens in their country of residence. People also convert to different religions without this affecting their citizenship status,⁵⁹ as often as others renounce their citizenship to acquire a different one while remaining faithful to their religious beliefs. All this suggests that our everyday experience is often much more fragmented than Okin assumes it to be,⁶⁰ and this, in turn, allows for the possibility that moderate incongruence is sustainable.

This is related to an important, yet often overlooked distinction made by Rawls between *fully* comprehensive and *partially* comprehensive moral conceptions. While a comprehensive moral conception accounts for what is of value in spheres of life that extend beyond the political domain, it is only a fully comprehensive conception which “covers all recognized values and virtues within one rather precisely articulated system.” A partially comprehensive conception, on the other hand, “comprises a number of, but by no means all, non-political values and virtues and is rather loosely articulated.”⁶¹ While Okin questions the prospects of stability where fully comprehensive doctrines held by citizens are incongruent with the political conception of justice,⁶² Rawls assumes that most people hold only partially comprehensive doctrines:

Most people’s religious, philosophical and moral doctrines are not seen by them as fully general and comprehensive; generality and comprehensiveness admit of degree, and so does the extent to which a view is articulated and systematic. There is lots of slippage, so to speak, many ways for the political conception to cohere loosely with a (partially) comprehensive view, and many ways within the limits of a political conception to allow for the pursuit of different (partially) comprehensive doctrines. This suggests that many if not most citizens come to affirm the principles of justice incorporated into their constitution and political

⁵⁹ This example is Rawls’s; see *Political Liberalism*, 30-2.

⁶⁰ On our fragmented moral experience, see also Thomas Nagel, “The Fragmentation of Value,” in his *Mortal Questions* (Cambridge: Cambridge University Press, 1979); and Michael Walzer, *Thick and Thin: Moral Argument at Home and Abroad* (Notre Dame, IN: Notre Dame University Press, 1994), Chapter 5.

⁶¹ Rawls, *Political Liberalism*, 13.

⁶² In her main example to support the argument from congruence, Okin asks the reader to suppose “that *all* of these ‘non-political’ settings inculcate and reinforce... the belief that there is a natural, God-given hierarchy of the sexes” (“*Political Liberalism*,” 29; emphasis added).

practice without seeing any particular connection, one way or the other, between it and their other views.⁶³

Rawls says that “much depended on the fact” that “usually we do not have anything like a fully comprehensive religious, philosophical, or moral view.”⁶⁴ It is this fact that accounts to a large extent for how an eventual development of overlapping consensus is possible. This is so because most citizens need not square their political conception of justice with a fully systematized and articulated doctrine that consistently applies to every other sphere of their life. If, on the contrary, their “comprehensive doctrine” is quite patchy – holding loosely together the different moral conceptions of different spheres of life – then the risk of not being able to hold one conception that is incongruent with some others is much lower.⁶⁵

From a feminist perspective Okin may be right in focusing on fully comprehensive doctrines. If women are being considered and treated as unequal to men across many spheres of their lives – family, workplace, church, media, and so on – then gender, by virtue of being so systematic, even if not explicitly articulated, is very much like a fully comprehensive doctrine. In this case the argument from congruence also seems right. It would be very hard, if not impossible, to maintain a split between a narrow political conception of the person as equal and an almost all-encompassing incongruent conception of the female person as unequal. But such a situation is also likely to be *unjust*.

So the argument from congruence is likely to work with respect to the family in one of the following circumstances: there is (I) a deep and clear conflict between the political conception of justice and the conception regulating the internal life of the family; or (II) an incongruence between the political conception of justice and a different conception which quite consistently regulates most of the other spheres of citizens’

⁶³ Rawls, *Political Liberalism*, 160; see also at 168, and *Justice as Fairness*, 33, 193.

⁶⁴ Rawls, *Political Liberalism*, 208. In other occasions Rawls refers to this fact as “indeed fortunate” and “particularly significant” (*Justice as Fairness*, 33 and 193).

⁶⁵ Something like this comprehensive doctrine is described as the third view in Rawls’s model case of an overlapping consensus; see *Political Liberalism*, 145-6, 169-70.

lives, including the family sphere.⁶⁶ It is not the conceptual ‘split’ as such that is causing the trouble but its depth or breadth. A potential conflict between political and family conceptions of *justice* although possible is likely to be limited in both of these aspects, and incongruence in such a case does not seem that unusual or necessarily unsustainable.

C. A parallel case argument

I have so far considered and rejected two arguments for the mirror view of justice in the family. Both of them held the personal (the family) to be political because of the effects the former has on the political domain. I now turn to a different possible interpretation of ‘the personal is political’ slogan according to which the personal shares the same key features of the political, and thus whatever moral principles apply to the political domain by virtue of having those features also apply to the familial sphere. Perhaps the most elaborate argument along these lines is found in Matthew Clayton’s *Justice and Legitimacy in Upbringing*.⁶⁷

Clayton begins by pointing out the key features by virtue of which the basic structure of society is taken to be the primary site of political justice. Those features are the involuntariness of the institutions of the basic structure – people do not enter or leave it voluntarily – and the significant effect they have on people’s life prospects and self-understanding. “It is fitting for institutions having those properties,” says Clayton, “to be subject to evaluation from the point of view of justice and legitimacy.”⁶⁸ This interpretation of the site of political justice serves in Clayton as a preliminary case for

⁶⁶ Both circumstances seem to apply in the case of illiberal communities within liberal societies. I discuss this case in detail in Chapter 5, Section 3.

⁶⁷ Matthew Clayton, *Justice and Legitimacy in Upbringing* (New York: Oxford University Press, 2006), 35-40, 93-102. Okin puts forward the first part of such an argument when she claims that “what happens in domestic and personal life is not immune from the dynamic of *power*, which has typically been seen as the distinguishing feature of the political” (*Justice, Gender, and the Family*, 128-9; emphasis in original). Yet she does not directly link this claim with the other part of the argument which, as we saw above, she also advocates.

⁶⁸ Clayton, *Justice and Legitimacy in Upbringing*, 35. Throughout his book, justice and legitimacy refer to *political* conceptions of justice and legitimacy. For his exposition of these conceptions, see *ibid.*, 6-19.

including parental conduct within its scope. “Since families have a profound effect on the values that a child acquires and the life chances she enjoys, the conduct of parents is evaluable from the point of view of justice.”⁶⁹ Later on Clayton builds on this to elaborate a “parallel case argument,” specifically with respect to the application of a political conception of legitimacy to parental conduct. There he adds coercion as a third key feature of the political domain – it is coercive due to the sanctions it imposes on citizens to back up its power.⁷⁰ This leads to the following statement of the argument.

...the relationship between parent and child shares the three salient features of the political domain. It is a non-voluntary coercive relationship that has profound effects on the child’s life prospects and her self-conception... If the parallels between the political and parental case are sound, the conclusion can be drawn that parental conduct, as well as political conduct, should be in accordance with the ideal of liberal legitimacy. That is, parents should exercise their authority in accordance with public reason, in a way that is capable of acceptance by free and equal persons.⁷¹

Now the analogy between the parent–child relationship and the political domain is by no means a perfect one. The authority of parents over children is normally only temporal, while the authority of the state over its citizens is life-long (unless they emigrate, but even then they do so only to *replace* the authority of one state with another). Moreover, the ways parents can coerce their children are often constrained by the coercive power of a higher and more powerful authority (i.e. the state), while this does not usually hold true for state coercion.⁷² One may also question whether the significant effects of parent–child relationships are as pervasive as the effects of society’s basic structure on people’s lives.⁷³ Finally, parent–child relationships display additional features – such as the often-present affection between parents and children

⁶⁹ Ibid., 37.

⁷⁰ In Chapter 1 of his book, Clayton follows G. A. Cohen’s argument (in “Where the Action Is”) that coercion is not a strictly necessary feature for qualifying within the purview of justice and legitimacy. See Clayton, *Justice and Legitimacy in Upbringing*, 35-40; but also Okin, “Justice and Gender: An Unfinished Debate,” 1552n, for how coercive *state* power is present in families.

⁷¹ Clayton, *Justice and Legitimacy in Upbringing*, 93-4.

⁷² These dissimilarities are pointed out by Clayton; see *ibid.*, 96-7.

⁷³ See Samuel Freeman, *Rawls* (London: Routledge, 2007), 420-2, especially at 422.

– not present in the political domain, which may make concerns about justice and legitimacy less urgent.⁷⁴ Nonetheless I think Clayton is right to argue that we should not overstate these differences and overlook the normative significance of the similarities of the familial and political domains. I share his view that the similarities to a certain extent do highlight the relevance of issues of justice (and legitimacy) in the parent–child relationship. However, we should note that the conclusion Clayton draws from these similarities goes much further. For him the fact that the parent–child relationship shares with the political domain the features of involuntariness, profound effects and coercion tells in favour of the application of the same moral principle, namely the principle of liberal legitimacy. Parental conduct ought to be constrained by the same standards of reasoning and justification by which political conduct is constrained. Both should conform to public reason; they “must proceed in a manner that is acceptable to free and equal persons,” and therefore “should be capable of justification by reference to anti-perfectionist ideals, i.e. ideals that do not appeal to the whole truth about ethics or religion.”⁷⁵ This is the far-reaching conclusion I now turn to consider – and reject.

First, it is important to note that although Clayton’s preliminary argument is for the inclusion of parental conduct within the purview of political justice and legitimacy, his elaborated parallel case argument concerns only legitimacy. Nowhere does he state that Rawls’s two principles of justice are to regulate the internal life of families (although neither does he deny it). Now, in Rawls’s political liberalism justice and legitimacy are complexly interwoven and yet distinct moral concepts. A political order can be perfectly legitimate while being only imperfectly just.⁷⁶ Perhaps Clayton could disentangle justice and legitimacy in such a way as to make his argument applicable to legitimacy but not to justice. Still, justice and legitimacy are so closely related in Rawls that I highly doubt whether this would be possible. The principles of justice and the

⁷⁴ See Rawls, *Political Liberalism*, 137.

⁷⁵ Clayton, *Justice and Legitimacy in Upbringing*, 94, 95.

⁷⁶ This is because the content of public reason is broader than any one reasonable political conception of justice. Instead it is given “by the family of (liberal) political conceptions of justice satisfying the criterion of reciprocity.” (Rawls “Public Reason Revisited,” 803; see also at 773-7; and Rawls, *Political Liberalism*, xlviii-l, 223, 226-7.)

guidelines of inquiry of public reason are, so to speak, two sides of the same coin – a liberal political conception of justice. This conception introduces guidelines for public inquiry as complementary to the principles of justice, to allow citizens to decide whether the principles properly apply and which laws and policies best satisfy them.⁷⁷ Moreover, it is not only the ‘how’ of public reason that is given by a political conception of justice but also the ‘what’ that qualifies as public reason – “to engage in public reason is to appeal to one of these political conceptions [of justice] – to their ideals and principles, standards and values.”⁷⁸ Thus, stating that public reason should constrain parental conduct actually implies that parental conduct should be capable of being justified in terms of a political conception of justice. But perhaps most importantly,⁷⁹ Rawls says that the principle of legitimacy has the same justificatory basis as that of the principles of political justice:

In justice as fairness, and I think in many other liberal views, the guidelines of inquiry of public reason, as well as its principles of legitimacy, have the same basis as the substantive principles of justice. This means in justice as fairness that the parties in the original position, in adopting principles of justice for the basic structure, must also adopt guidelines and criteria of public reason for applying those norms. The argument for those guidelines, and for the principle of legitimacy, is much the same as, and strong as, the argument for the principles of justice themselves... In justice as fairness, then, the guidelines of public reason and the principles of justice... are companion parts of one agreement.⁸⁰

The multifaceted relation between justice and legitimacy makes evident why Clayton’s parallel case argument concerning legitimacy is also highly significant to our concern with the relation between a political conception of justice and justice in the family. We have no reason to assume that the argument could not be applied to justice as well. In

⁷⁷ Rawls, *Political Liberalism*, 223-4. Strictly speaking the principle of legitimacy is met by following the guidelines of inquiry of public reason formulated by *any* reasonable political conception of justice. See the references in note 76 above.

⁷⁸ Rawls, “Public Reason Revisited,” 776.

⁷⁹ I say ‘most importantly’ because this shows why we should reject the legitimacy-focused parallel case argument if my following reply to a justice-focused argument is sound; see note 87 below and the accompanying text.

⁸⁰ Rawls, *Political Liberalism*, 225-6.

what follows, therefore, I focus on rejecting the applicability of the argument to a political conception of justice, before returning to the issue of public reason to demonstrate how it relates to my rejection of a justice-focused argument.

Clayton points out three key features of the basic structure and observes that they are also salient to the parent–child relationship. If we accept this, as I think we should, then the parent–child relationship is also a primary subject of justice. But this is as far as the parallel case argument can take us. The three key features shared by the political and familial domains cannot, and are not meant to, tell us what the *content* of the relevant conception of justice is. While they may account for our concern with social justice and, as the argument suggests, also with family justice, something else is required to elaborate the conception(s) of justice suitable for these contexts – this being a “fundamental organizing idea” of the context within which a conception of justice is meant to apply. In Rawls’s case the concern is with a conception of social justice and thus the fundamental organizing idea required is that of society. His own conception of social justice, justice as fairness, takes as its starting point the idea of society as “a fair system of cooperation over time, from one generation to the next.”⁸¹ Together with the idea of citizens – those engaged in cooperation – as free and equal persons, the “first fundamental question about *political* justice” is formulated as follows: “what is the most appropriate conception of justice for specifying the fair terms of social cooperation between citizens regarded as free and equal, and as fully cooperating members of society over a complete life, from one generation to the next?”⁸² The political conception of justice as fairness offers itself as an answer to this particular question and it is in light of this question that its principles are articulated and argued for. They are to specify the fair terms of social cooperation between free and equal citizens:

We must keep in mind that we are trying to show how the idea of society as a fair system of cooperation can be unfolded, so as to find principles specifying the basic

⁸¹ *Ibid.*, 14; see also at 15-16.

⁸² *Ibid.*, 3; emphasis added.

rights and liberties and the forms of equality most appropriate to those cooperating, once they are regarded as citizens, as free and equal persons.⁸³

If this interpretation is sound then it also clarifies why Rawls limits the application of this particular conception “solely to the basic structure of society” as this structure is the “unified scheme of *social cooperation*.”⁸⁴ It is because we formulate the conception of political justice from the specifics of the political relationship of democratic citizenship that it applies to the site of this relationship, the basic structure of society.⁸⁵ The principles of justice, tailored to this context, are considered by Rawls to be the most appropriate, but there is no reason to assume they would work in contexts other than the original one. Rawls readily acknowledges that “[i]n many if not most cases these principles give unreasonable directives.”⁸⁶

So in order to make a case for applying the political conception of justice to the parent–child relationship it is not enough to point out the three parallel features – involuntariness, profound effects and coercion – giving rise to concerns of justice. For the parallel case argument to work, the contextual circumstances to which one wants to apply a conception of justice must sufficiently parallel the original circumstances the conception is taken from. Although we have not yet offered an account of the parent–child relationship, a brief glance at the way Rawls characterizes the democratic citizenship relationship is enough to give rise to scepticism about the prospects of

⁸³ *Ibid.*, 27. See also Rawls, *Justice as Fairness*, 25: “...we start with the organizing idea of society as a fair system of cooperation and then make it more determinate by spelling out what results when this idea is fully realized (a well-ordered society), and what this idea applies to (the basic structure). We then say how the fair terms of cooperation are specified (by the parties in the original position) and explain how the persons engaged in cooperation are to be regarded (as free and equal citizens).” A similar idea is also present, albeit less explicitly, in Rawls, *Theory*, 9: “Fully to understand a conception of justice we must make explicit the conception of social cooperation from which it derives.” See also the claim that “implicit in the contrasts between classical utilitarianism and justice as fairness is a difference in the underlying conceptions of society” (*ibid.*, 29-30).

⁸⁴ Rawls, *Political Liberalism*, 223; emphasis added.

⁸⁵ The basic structure might not be the exclusive site of the citizenship relationship (see note 54 above). What matters for my purpose here is that the parent–child relationship is different from the citizenship one.

⁸⁶ Rawls, *Political Liberalism*, 261.

reapplying the political conception to the familial domain.⁸⁷ Is it plausible to characterize the parent–child relationship as a “fair system of cooperation between free and equal members”? I think not. Although cooperation does take place in families it seems to be quite a marginal fact in characterizing the parent–child relationship. More importantly, parental power, in contrast with democratic political power, is not the power of free and equal members as a collective body.⁸⁸ In actuality it seems to be quite the opposite – that it is only because children are not yet equal to, and as free as, their parents that we allow the latter to exercise involuntary coercive power over the former.⁸⁹ In any case, parental power is surely not equally *shared* by family members – adults and children alike – as a collective body. This is not to say that the political and parent–child relationships cannot parallel each other.⁹⁰ My claim is that we have strong reasons to question the applicability of a democratic citizenship conception of justice to the context of the parent–child relationship.

But perhaps this is too hasty. Since the family is part of the basic structure of society, as we have already affirmed, it is to satisfy (together with the other institutions of the basic structure) the principles of political justice. This implies, one may suggest, that parents are to direct their conduct so that they do their bit in satisfying these principles. We thus return to the original issue of public reason. If the judiciary should reason according to a political conception of justice, why should parents be any different? After all, the family is part of the basic structure as much as the legal system is. Yet there is a crucial difference here. The judicial system operates entirely within the political domain. It displays no other relationship than that between citizens (and,

⁸⁷ This also holds true for the legitimacy-focused parallel case argument.

⁸⁸ For Rawls’s characterization of political power in a constitutional democracy, see *Political Liberalism*, 216-18; “Public Reason Revisited,” 769-70.

⁸⁹ Notice moreover that it is according to the *political* conception of the person that citizens are regarded as free and equal. Once we move away from the domain of citizenship it is highly likely that some people will not share the conception of the person as free and equal, not only with respect to children (as the text suggests) but also with respect to adults. So arguing that parental conduct should be constrained by their children’s future status as free and equal adults invokes a controversial *comprehensive* claim regarding the value of autonomy.

⁹⁰ The patriarchal political theory of Robert Filmer is an example of such a parallel account, most famous nowadays due to its rejection by John Locke in his *Two Treatises of Government*.

deriving from it, that between them and their collective government). This is not the case in the parent–child relationship. There is a political dimension to what happens in families, and parental conduct does have bearings on political justice. Nonetheless, parents are not merely government officials in the way justices are. This is one thing that differentiates the family as a site of (to some extent) private, rather than collective, upbringing.⁹¹ Of course, parents are also citizens and so the considerations that apply to all citizens apply also to them, but being a parent is different to being a public-appointed guardian for an orphan.⁹² How exactly it is different is yet to be explored. For now, the intuitive contrast between familial and collective upbringing seems enough to establish the need for such an exploration. This also accords with what I take the following passage of Rawls to suggest.

It is the distinct purposes and roles of the parts of the social structure and how they fit together, that explains there being different principles for distinct kinds of subjects. Indeed, it seems natural to suppose that the distinctive character and autonomy of the various elements of society requires that, within some sphere, they act from their own principles designed to fit their peculiar nature.⁹³

Grappling with Clayton’s parallel case argument points towards an articulation of the distinctive character of the parent–child relationship, and a formulation of a conception of justice to fit its peculiar nature.

5. Conclusion

This chapter examined, through the prism of Rawls’s theory of justice, the bearings a political conception of justice may have on justice between parents and children. I

⁹¹ See note 30 above.

⁹² This might be where the source of my disagreement with Clayton lies as he seems to treat parents as no different from public-appointed guardians. Within his argument concerning *parental* conduct, he writes: “If we appoint a guardian to act on [a young child’s] behalf, we must ask how a guardian should approach the issue of the legitimate treatment of a child in a liberal society” (Clayton, *Justice and Legitimacy in Upbringing*, 99; emphasis added).

⁹³ Rawls, *Political Liberalism*, 262.

began with articulating the tension present in Rawls's account of justice and the family, between his inclusion of the family as part of the basic structure and his prescription to treat it as no different from associations not included in that structure. Following the distinction between the issues of justice of and in the family I argued that the inclusion of the family as part of the basic structure is relevant mainly to the former. I then examined two potential ways of accounting for justice in the family through a political conception of justice.

The constraints view asserts that justice in the family is addressed through the constraints that the political conception of justice imposes on the internal life of families. This view draws on Rawls's own suggestion to treat the family in *this* respect as any other association, but goes further in maintaining that *all* issues of justice in the family are thus addressed. This I found to be problematic as it leaves what justice requires of parents largely undetermined and overlooks the relevant dimensions in which the family is disanalogous to other associations. The result of the discussion was to call for a local conception of family justice to determine what justice requires of parents.

The second way of trying to address justice in the family through political justice aims at filling precisely this gap. The mirror view in its various arguments holds that, content-wise, family justice should mirror political justice. Although I eventually rejected this view, exploring the arguments in its favour helped to set the course for further inquiry. The examination of the parallel case argument indicated that before formulating a conception of justice we need to articulate the distinctive features of the specific context to which it is meant to apply. The school of justice argument pointed out one interest from the perspective of citizenship in observing justice in the family, namely to cultivate a sense of justice in children. Together with the disanalogies between membership in associations and children's membership in families, this has suggested a preliminary case for (some measure of) state enforcement of family justice. Yet the rejection of the argument from congruence implied that there might be some

incompatibility (or even conflict) between the demands of justice stemming from the contexts of family and citizenship.

The following three chapters pursue these matters by developing a contextualist account of family justice. Chapter 3 offers a characterization of the parent–child context, in view of which a principle of family justice is formulated and defended in Chapter 4. Chapter 5 then returns to examine the different interplays between the demands of justice at the levels of family and polity.

Chapter 3

The Parent–Child Relationship

I went through an identity crisis. And our identity is where we come from and who we are... My wife and I are trying to break this cycle, trying hardest to break this cycle of shattered families. We're going to make sure that we stick together and bring our children up so they know who they are, what they are and where they came from.

(Aboriginal man adopted into a non-Aboriginal family)¹

1. Introduction

Our critical engagement with the child-centred and political approaches recommends developing a *contextualist* account of justice in the family. Contextualists, according to David Miller,

hold that it is the context of distribution itself that brings one or other principle of justice into play... What they have in common... is the idea that when we have to decide what justice requires, we do not automatically reach for the same principle or set of principles, but instead we interpret the context of decision in a certain way, and this tells us which principle to use.²

We saw that the relational context should be taken into account in answering our question but also that the relevant context is not strictly political as political justice proved inadequate to capture the demands of justice in the parent–child relationship. This seems to correspond to Miller's own contextualist view, which identifies the relevant contexts of distribution as the different relationships in which human beings

¹ Confidential evidence 696, New South Wales, cited in Human Rights and Equal Opportunity Commission (Australia), *Bringing Them Home: Report of the National Inquiry into the Separation of Aboriginal and Torres Strait Islander Children from their Families*, 1997 (http://hreoc.gov.au/social_justice/bth_report/report/index.html), Chapter 11.

² David Miller, "Two Ways to Think About Justice," *Politics, Philosophy & Economics* 1 (2002): 5-28, at 10-11.

stand to each other, and suggests accordingly that “we can best understand which demands of justice someone can make of us by looking first at the particular nature of our relationship.”³ This first task is pursued in this chapter.

The child-centred approach has brought forward the parents-as-fiduciaries view.⁴ The fact that children’s human capacities are not yet developed opens the way for adults to assume the task of raising them. Drawing on the contrast with collective upbringing, we may also add that the family is a site in which the task of upbringing is taken on by specific adults in an intimate context.⁵ However, as I have already suggested, for the picture of the parent–child relationship to be complete we need to go beyond child-centred considerations. In most if not all societies parenting is usually undertaken by individuals *voluntarily*, and founding a family may even be considered a human right.⁶ Moreover, many parents who are not the best fiduciaries available to their children are nonetheless allowed to maintain this fiduciary relationship with them. Indeed, we found the idea of redistributing children away from their parents, in accordance with the children’s best interests, morally troubling. All this suggests that adults do have an interest of their own in starting families and establishing parent–child relationships and that this is *not* an interest which can be easily met by other types of interpersonal relationships. An account of what makes the parent–child relationship distinctively valuable for parents is called for.

³ David Miller, *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 1999), 25. For the more substantive theory built on this view, see *ibid.*, Chapter 2. Other forms of contextualism include Michael Walzer’s goods-based theory in *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983) and Andrea Sangiovanni’s institutionalism in “Justice and the Priority of Politics to Morality,” *Journal of Political Philosophy* 16 (2008): 137-64, which he attributes also to Rawls. On the relation between Rawls’s theory of justice and contextualism, see also Miller, “Two Ways to Think About Justice,” 17-18.

⁴ See Chapter 1 note 9 for references.

⁵ Véronique Munoz-Dardé, “Is the Family to Be Abolished Then?” *Proceedings of the Aristotelian Society* 94 (1999): 37-56, at 39: “...the family as a small intimate group where elders are responsible for raising and caring for children, and have authority over them, irrespective of the children’s wishes.” Cf. David Archard, *Children, Family and the State* (Aldershot: Ashgate, 2003), 69: “A family is essentially a stable multigenerational association of adults and children serving the principal function of rearing its youthful members.”

⁶ See, for example, United Nations, *The Universal Declaration of Human Rights*, 1948 (www.un.org/en/documents/udhr/), Article 16.

In response to this theoretical gap it has recently been argued, most notably by Harry Brighouse and Adam Swift, that the parental fiduciary role also explains the value of the family from a parent-centred perspective.

[Parents] have a non-fiduciary interest in playing this fiduciary role. The role enables them to exercise and develop capacities the development and exercise of which are for many crucial to their living fully flourishing lives. Through exercising these capacities in the specific context of the intimately loving parent–child relationship, a parent comes to learn more about herself, she comes to develop as a person, and she derives satisfaction that otherwise would be unavailable.⁷

Here the parent–child fiduciary relationship arises not only from the child’s interest but also from the parent’s interest in playing this fiduciary role. The latter interest is meant to provide a justification of the family, independent of child-centred or external considerations. “In order to provide this good for adults,” Brighouse and Swift maintain, “the institution for child rearing needs to be the family, or something that mimics the family very closely.”⁸ Thus we are offered a *fiduciary-focused model* of the parent–child relationship from a parent-centred perspective.

What follows is an argument against this model, but let me first point out those of its aspects that I find attractive, especially in Brighouse and Swift’s elaborated version. This also serves to explain why I choose to develop my own interpretation of the parent–child relationship through a critique of this model. First, the focus is on the interest of parents yet the claim is not that it is the only interest that matters; rather, that it also matters in determining what is morally required of and permissible for parents to do for, to and with their children.⁹ Second, the relevant interest is one

⁷ Harry Brighouse and Adam Swift, “Parents’ Rights and the Value of the Family,” *Ethics* 117 (2006): 80-108, at 95. See also Harry Brighouse and Adam Swift, “Legitimate Parental Partiality,” *Philosophy and Public Affairs* 37 (2009): 43-80, at 53-4; Michael W. Austin, *Conceptions of Parenthood: Ethics and the Family* (Aldershot: Ashgate, 2007), 81.

⁸ Brighouse and Swift, “Legitimate Parental Partiality,” 54.

⁹ See Brighouse and Swift, “Parents’ Rights,” especially at 81; Austin, *Conceptions of Parenthood*, 75-87; Matthew Clayton, *Justice and Legitimacy in Upbringing*, (New York: Oxford University Press, 2006), 54-61; cf. Sarah Hannan and Richard Vernon, “Parental Rights: A Role-Based Approach,” *Theory and Research in Education* 6 (2008): 173-89. The phrasing in the text is meant to encompass ‘parental rights,’ which is the focus of those authors, as well as ‘parental obligations,’ which is my own focus. Parental rights tell us

parents have in the parent–child relationship itself, not one they have independently of it.¹⁰ So although I share William Galston’s view that parents have an interest in raising their children according to their deepest commitments I believe he is wrong to see that interest as part of the parents’ expressive liberty.¹¹ Instead, I consider this interest to be essential for establishing a distinctively valuable interpersonal bond between parents and children. This leads to the third element in Brighouse and Swift’s account that I endorse, namely “that there is something distinctive about this kind of relationship and that for many people nothing will fully substitute.”¹² So the parent–child relationship is not merely an intimate relationship additional to the ones adults have with other adults,¹³ nor is the interest in parenting a particular instantiation of the interest in the more specific intimate relationships adults have with dependent others.¹⁴

From this point, my argument advances a twofold critique of the fiduciary-focused model. First, the model pays scant attention to a fundamental aspect of the parent–child relationship, here termed the *element of identity*. This refers to a strong sense of interconnectedness and continuity between the parent’s and child’s identities that is established during childhood by a process of reproducing some of the parent’s characteristics in the child. In this respect, the argument finds Brighouse and Swift’s characterization of the parent–child relationship to be incomplete, and seeks to supplement it. Second, the model wrongly locates the distinctive value of the relationship for parents in the fiduciary role they play for their children. In this respect,

what is morally permissible for parents to do whereas parental obligations tell us what is morally required of them. But the two dimensions are interrelated. The permissible is conditional on meeting what is required while the requirements are limited to allow space for it. In less abstract terms, parents’ pursuit of some of their own interests in their relationship with their children is conditional on meeting their children’s interests, but the extent to which they are required to meet the latter is somewhat constrained to leave room for pursuing the former.

¹⁰ See Brighouse and Swift, “Parents’ Rights,” 102.

¹¹ William A. Galston, *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice* (Cambridge: Cambridge University Press, 2002), Chapter 8.

¹² Brighouse and Swift, “Parents’ Rights,” 100.

¹³ Cf. Ferdinand Schoeman, “Rights of Children, Rights of Parents, and the Moral Basis of the Family,” *Ethics* 91 (1980): 6-19.

¹⁴ Cf. Clayton, *Justice and Legitimacy in Upbringing*, 60.

the argument rejects the model's parent-centred account and offers to relocate the distinctive value of the relationship in the element of identity.

To further clarify the latter point, in criticizing the fiduciary-focused model I do not deny that the fiduciary role parents play in their children's lives is of utmost value to children, nor that it may also be of value to the parents playing it. But this role, so I argue, does not underlie the distinctive value the relationship has for parents – that which is normally unavailable through other intimate relationships and which distinguishes its quality from them. As regards the element of identity, I maintain that it is of value also for children to experience. But again this is not where my main disagreement with the proponents of the fiduciary model lies. (As I mention below, they seem ready to acknowledge something like the element of identity as being valuable for children.) The disagreement is about what is distinctively valuable for parents to experience in the parent–child relationship, and may provide a justification of the family from a parent-centred perspective.

The argument is presented as follows: the next section explores the way Brighouse and Swift characterize the peculiar nature of the parent–child relationship and sets the stage for my argument against the fiduciary-focused model. Section 3 then describes three problems arising from that model, which cannot be resolved within its proposed framework. Section 4 introduces the element of identity to supplement the account of the parent–child relationship and to challenge the view that it is the parental fiduciary role that underlies the distinctive value the relationship has for parents. It does so by showing that an account which locates the distinctive value of the parent–child relationship in its element of identity is not susceptible to the problems raised in the preceding section. Section 5 addresses two potential objections to my alternative account and Section 6 concludes by pointing out the prospective implications of the argument for justice in the family.

2. The Brighthouse–Swift account

Brighthouse and Swift maintain that the intimate relationship between parents and children is not merely an additional intimate relationship to the ones adults usually have with other adults, but one of a different quality. This is owing to four specific features: (I) parents have power over children that is not reciprocated; (II) children do not have the power to exit the relationship; (III) the quality of intimacy is different as children love their parents in a spontaneous and unconditional way; and (IV) the moral quality is different as the parent has fiduciary responsibilities regarding the immediate well-being of the child and the development of his physical, cognitive, emotional and moral capabilities.¹⁵

In fact, it is the fourth feature concerning the parents' fiduciary role that bears most of the weight in Brighthouse and Swift's parent-centred argument. "[P]laying a fiduciary role is a key interest," whereas "the other features of the relationship are significant for the importance of that interest," and it is this interest in facing the "challenge of parenting" that grounds the parent–child relationship from a parent-centred perspective.¹⁶ This is because the parental fiduciary role enables the development and exercise of certain capacities which, for many adults, are crucial to their living fully flourishing lives. Before focusing on the fiduciary element, we should first question the extent to which the other three features are exhibited *throughout* the childhood period and can be used to characterize the parent–child relationship *in general*.

Let us start with the first feature of unequal power relations. This refers to the vulnerability of children and their complete dependence on their parents for their well-being. One aspect of this is that parents have power of life or death over their children. This is true, but neither does the state leave the exercise of this power to the parents' discretion, and so this aspect is less relevant here. The more important point for

¹⁵ Brighthouse and Swift, "Parents' Rights," 91-101.

¹⁶ *Ibid.*, 95-6.

Brighouse and Swift seems to be that parents have the power to make their children's lives miserable or enjoyable and, in contrast with adult–adult relationships, this power cannot be reciprocated. However, although it may be true that infants and toddlers cannot (self-consciously) reciprocate their parents' power to make them happy or unhappy, this is certainly not the case with older children. As many parents *and* children know very well, children, if not appeased, can make their parents' lives quite uncomfortable to say the least, and parents may prefer bowing to their children's wishes for peace's sake rather than paying the price of fighting with them. This suggests that the parent–child relationship, in general, is, to some extent, reciprocal and therefore less unequal than what Brighouse and Swift seem to have in mind.

Children's lack of power to exit the relationship also diminishes after early childhood. As far as their physical and cognitive capacities are concerned, children, say, older than six can survive outside such a relationship. Surely it is much better for children to enjoy a stable and healthy relationship with specific caretakers throughout childhood. Nonetheless, the fact that children have no resources whatsoever to exit is often a matter of state legislation or social convention rather than human ability.¹⁷ Moreover, not having opportunities to exit is, to a large extent, the *result* of the state backing up and enforcing parental authority. Children do not have the means to exit because the state does not usually allow them to 'divorce' their parents and establish relationships with other caretakers or seek alternative living arrangements. Since one of Brighouse and Swift's main aims is to provide a justification for parental authority they cannot take the implications of its enforcement by the state as a given.

The third feature concerning the different quality of intimacy is again most prevalent in the early years of childhood, as Brighouse and Swift acknowledge. Yet even in early years it might not always be the case that the love one receives from one's child is spontaneous and unconditional. In adoptive families, for example, it is not uncommon

¹⁷ Daniel Defoe notes that in 1723 in some places in Britain every child over five years old could earn his own bread in the cloth trade; see his *A Tour through the Whole Island of Great Britain*, ed. Pat Rodgers (London: Penguin Classics, 1986), 85-6.

for parents to have to work hard to gain the children's love and trust.¹⁸ The claim about unconditional love is also dubious when we consider the very first stages of the biological parent–baby relationship. The love that parents receive from their baby seems quite conditional on them proving time after time to be the providers for the baby's needs.

We should also observe that the picture painted by Brighouse and Swift is of a somewhat idealized family. Family life, in general, does exhibit love, affection, pleasure, enjoyment and satisfaction – but also anxiety, anger, pain, envy, frustration and resentment. This being said, I do not deny the intimacy of the parent–child relationship. It is an intimate relationship because it is, to varying degrees, private, close and emotional.¹⁹ It takes place in a somewhat private domain where interactions between family members are not easily accessible to outsiders. This usually has a physical dimension: the household where the family members reside. Their relationships thus become more intense and close and that is one reason why family members are rarely emotionally indifferent towards one another. So even in a more realistic picture of family life, the parent–child relationship is still one of intimate character.

The upshot of this discussion is that the Brighouse–Swift account of the parent–child relationship is mostly relevant, as it stands, to the period of early childhood. If we want to go beyond that and characterize the parent–child relationship more generally then the picture we are offered is, essentially, one of an intimate fiduciary relationship. In what follows I challenge this picture to pave the way for supplementing it with another feature, the element of identity, and argue that it is this element, not the fiduciary role itself, which grounds the distinctive value the parent–child relationship has from a parent-centred perspective.

¹⁸ See Vera Fahlberg, *A Child's Journey Through Placement*, UK edition (London: British Agencies for Adoption and Fostering, 1994). It is not the fact that these parents are not biological that makes the difference, but their entering the child's life at a point when she already has some attachment pattern towards others.

¹⁹ The degrees vary not only between families but also between cultural contexts. A London-based Indian friend told me of a time when, during a visit back to her parents' house in her home village, she was awoken by one of the villagers doing her hair while sat on her bed. "They know I'm so busy in these visits and want to make sure they get to see me," she explained.

3. Three problems

Let me first explain the nature of my challenge to the fiduciary-focused model. A philosophical model of the parent–child relationship is not simply a summary of all existing desires and preferences people have with respect to parenting. Surely it should not take on board certain attitudes that, although held by some, we find morally objectionable. Yet its purpose, at least in part, is to order and explain our widely shared pre-theoretical beliefs and attitudes toward the issue in question. This implies that those beliefs and attitudes are a legitimate component in *formulating* such a model. Some may eventually be placed in the periphery of the model, others in its core. A few might be abandoned altogether as they are found to be inconsistent with others or with the model as a whole. But our pre-theoretical beliefs and attitudes also remain relevant for *assessing* the model once it is formulated. We can therefore ask ourselves whether it does a good job in ordering and explaining them. The following three points take issue with aspects of the fiduciary-focused model and are intended to raise doubts about it, demonstrating how the alternative model outlined in this chapter does a better job in this respect.

A. The biological connection

The parent-centred justification of the family based on the interest in the parental fiduciary role cannot fully account for the significance many parents ascribe to parenting their biological children.²⁰ This is because a biological connection does not normally affect a person's prospects of realizing *that* interest, as Brighouse and Swift openly concede:

We have shown why no one who will do an adequately good job of raising a child should be prevented from being a parent. But we have not shown that the child

²⁰ For simplicity's sake I do not distinguish between the genetic and gestational dimensions and take the biological connection to include them both.

they should be allowed to raise should be their own biological child. This is not because we believe that there is no weighty interest in raising one's own biological child but because we do not have an argument establishing that there is such an interest... Furthermore, the interest we have described can, at least for many, be realized in a relationship with a child who is not biologically related to one. So, absent an argument that the interest in having a biological connection to the child one raises is very powerful indeed, we do not claim that the interest in being a parent impugns redistribution at birth.²¹

The challenge is not just to argue for allowing adults to parent their biological children, but to argue this from a *parent-centred* perspective. Taking just one example, the consideration that allowing the state to redistribute children at birth would give it too much power,²² although true, does not do the work here. Notice, moreover, that there are, in fact, two issues to account for, as the interest in parenting one's own biological child may refer either to the interest in having a biological child to parent or to the interest in keeping one's already existing biological child.

Anca Gheaus provides an argument for the latter interest, thereby supplementing the fiduciary-focused model to address the redistribution-at-birth scenario.²³ She claims that for biological parents, the period of pregnancy involves all sorts of burdens, especially for mothers, which in turn form an incipient intimate relationship between the parents and their future baby. Therefore, redistributing babies away from their biological parents would be unfair to the latter, who incurred the costs of pregnancy, and would further destroy an already existing intimate relationship. Gheaus's argument is convincing as presenting a case for allowing parents to keep their biological child after birth. Yet it does not explain (nor is it meant to) the more basic interest in parenting one's biological child – having a biological child to parent. The argument only provides a justification for parenting one's biological child if one already has a biological child. But it leaves unexplained why it is significant for many would-be parents to have biological children (even when this involves risks and difficulties), and provides no justification for

²¹ Brighouse and Swift, "Parents' Rights," 97-8.

²² See Amy Gutmann, "Children, Paternalism, and Education: A Liberal Argument," *Philosophy and Public Affairs* 9 (1980): 338-58, at 343-5.

²³ Anca Gheaus, "The Right to Parent One's Biological Baby," *Journal of Political Philosophy*, forthcoming.

allowing them this in the first place. If anything, the argument from the costs of pregnancy provides parent-centred reasons for trying to avoid pregnancy and opting for adoptive over biological parenthood. Gheaus does not argue that pregnancy is an intrinsically desirable experience, and while biological parents and their baby already have an incipient intimate relationship at the time of birth, adoptive parents can presumably 'catch up' and establish an intimate relationship with their adopted babies later on. Thus, even if the fiduciary-focused model can be supplemented to impugn redistribution at birth, it still falls short of accounting for the more basic interest in having biological children to parent.

B. Beyond the fiduciary phase

The fiduciary-focused model also struggles to explain the parents' interest in their adult children's lives. If, as Brighthouse and Swift argue, the main interest in parenting has to do with developing and exercising certain capacities through the parental fiduciary role, why is it that so many parents remain deeply involved in their children's lives long after they ceased exercising those fiduciary-related capacities? Parents are often far from indifferent to their adult children's lives, suggesting that their interest in the relationship extends beyond the fiduciary phase.

Proponents of the model could point out in response that an integral part of the parental fiduciary role is to help the child become "an adult who is independent of her parents, capable of taking over responsibility for her own judgment and for her own welfare."²⁴ This forward-looking dimension may explain some of the parents' involvement in their adult children's lives. By observing and engaging with their adult children parents can obtain feedback on their past performance as fiduciaries and learn how they scored in the "challenge of parenting." While this response concedes that parents have an interest in their adult children's lives, it sees it as derivative of the fiduciary-based interest. However, it fails to explain why parents are often interested in

²⁴ Brighthouse and Swift, "Legitimate Parental Partiality," 53.

the actual way in which their adult children lead their lives. Many parents care not only about their children leading independent lives, but also about them adopting specific values, beliefs and practices.²⁵ Moreover, for many parents the specific path their children follow may be much more important than the question of how they came to follow it, whether it was autonomously chosen or not. It is hard to see how the interest in the adult children's life plan can be accommodated in this response.

Yet, the interest of parents in their adult children's lives is, perhaps, not one they have *qua* parents. If and when parents have such an interest it might be as people who share an intimate relationship with their children, which is now closer to the relationship that exists between friends.²⁶ After all, one does not have to be a person's parent to feel deeply involved in that person's life; people are also sincerely engaged in what happens to their friends. Combining this point with the previous response we could construct a somewhat more complex view of the parent-child relationship whereby the primary interest adults have in parenting lies in their opportunity to act as fiduciaries for children, but as the children become adults and (if and when) the parents develop a friendship-like relationship with them, the parents have an interest *as friends* in their adult children's lives.

But this modified reply seems implausible in view of the differences between friendship and the relationship between parents and their adult children. Perhaps the first dissimilarity that comes to mind is that parents and their adult children cannot choose one another the way friends can. Since they are already present in each other's lives, they cannot voluntarily enter the relationship the way friends can. Yet this in itself is not convincing. The mere fact that parent and adult child already stand in *relation* to

²⁵ It would be a mistake to view this claim as primarily relating to illiberal parents. No doubt liberal parents would be satisfied if their children emerged with any one of a wide range of life plans, but this is because many life plans accord with liberal values. I am inclined to believe that many (if not most) liberal parents would feel deeply distressed if their adult son became a fascist party activist or if their grown daughter decided to follow fundamental Islam and adopted the veil.

²⁶ See Jane English, "What Do Grown Children Owe Their Parents?" in Onora O'Neill and William Ruddick, (eds.), *Having Children: Philosophical and Legal Reflections on Parenthood* (New York: Oxford University Press, 1979); Diane Jeske, "Families, Friends and Special Obligations," *Canadian Journal of Philosophy* 28 (1998): 527-56.

one another does not tell against their ability to voluntarily form a *relationship* or transform a currently existing one. Moreover, it is also true of many if not most friendships that they do not develop *ex nihilo* but build on an already existing relation(ship) that the persons have, say, as co-workers or neighbours.

More important than the parent and adult child being *already* present in each other's life is that their former parent–young child relationship is, in a way, *still* present and is very difficult, if at all possible, to set aside. As Joseph Kupfer puts it, “[w]e outgrow childhood, but not being someone's child.”²⁷ There are two crucial aspects to this. The first concerns the unequal standing of parent and child, which often shapes the relationship even after the child has become an adult.²⁸ According to Laurence Thomas, this is why friendships are rarely formed between parents and children. When one party “feels entitled to make authoritative assessments of the other's life or feels that she or he is owed deference... self-examination with another is more like having another sit in judgment upon one rather than the attainment of self-understanding that it is meant to be.”²⁹ The second aspect is that parent and child lack the sort of mutual independence needed for friendship. “Part of the delight in a complete friendship turns upon the way two people discover and grow into each other's lives,” Kupfer argues, “but parents and adult children cannot develop in quite this fresh way because their lives have been entwined since the child's beginning. Neither one can really ‘discover’ an independently existing other... they don't discover each other as beings with independent histories and different values to be learned.”³⁰

²⁷ Joseph Kupfer, “Can Parents and Children Be Friends?” *American Philosophical Quarterly* 27 (1990): 15–26, at 24.

²⁸ This claim is not inconsistent with my criticism of Brighouse and Swift's point about the parent–child relationship being unequal. Their point was that, unlike in adult–adult relationships, children *do not have* power to reciprocate their parents' conduct. I argued in response that children *do have some* power to reciprocate and that the parent–child relationship is, therefore, not *as* unequal as Brighouse and Swift claim. However, this is perfectly consistent with holding that parent and child are not equal in that sense – the contrary view seems absurd – or in the sense mentioned in the text that follows.

²⁹ Laurence Thomas, “Friendship and Other Loves,” in Neera Kapur Badhwar (ed.), *Friendship: A Philosophical Reader* (Ithaca, NY: Cornell University Press, 1993), 54.

³⁰ Kupfer, “Can Parents and Children Be Friends?” 20.

Returning to the interest of parents in their adult children's lives, we may observe that parents are sometimes concerned and engaged not for the sake of their children but for their own sake too. Now if a friend considers his own interests when he weighs up what we should or shouldn't do, we see him as less of a friend.³¹ But we do not think the same of parents who want their adult children to adhere to certain values, traditions and practices not *only* because it is good for the children, but also – and independently from the previous consideration – because they are *their own* values, traditions and practices.³² The latter consideration does not usually exist between friends, and when it does it seems to undermine the quality of friendship. To be sure, friendships usually depend on some characteristics being *shared* by the parties and so they are likely to weaken or even come to an end if those characteristics are no longer shared. Thus, the interest of friends in continuing their relationship may imply an interest in continuing sharing those characteristics. Yet it would be odd if a friend insisted we should follow *his own* path in the name of *our* friendship. It would be odd precisely because it undermines those two aspects of equal standing and independence that we expect to find in friendships but not in the parent–adult child relationship. We may thus conclude that neither their fiduciary role nor a friendship-like relationship can explain the parents' interest in their adult children's lives.

C. Fiduciary-related capacities

The final problem I wish to examine concerns the distinctively high value that proponents of the model place on the parents' fiduciary-related capacities. They state that, for many people, the realization of these capacities is "crucial to their living fully

³¹ Aristotle, *Nicomachean Ethics*, ed. Roger Crisp (Cambridge: Cambridge University Press, 2000), 145: "People say that we ought to wish good things to a friend for his own sake."

³² Admittedly, the two considerations are often very hard to disentangle. But consider, for example, the practice of maintaining the family name. Particular family names are usually not 'better' than others (although the relevant social context may be such that some family names are more advantageous than others). Yet it is quite common for parents to care deeply that their children maintain the family name, that is, the *parents'* name (and the name of their parents).

flourishing lives,” and that parents’ fiduciary relationship with their children makes “a contribution to one’s flourishing of a different kind.”³³ Yet the model fails to explain *why* realizing these capacities is crucial to human flourishing and *how* the contribution the parent–child relationship makes to one’s flourishing is of a different kind.

Brighthouse and Swift suggest that “through exercising these capacities a parent comes to learn more about herself” and “to develop as a person.”³⁴ Yet this seems too weak to imply that they are *crucial* to human flourishing. We also learn about ourselves and develop as persons through realizing the capacities involved, for example, in writing a PhD thesis, yet contending that writing a PhD thesis is crucial to human flourishing is to exaggerate the importance of that particular experience. To be sure, realizing one’s fiduciary-related capacities may have significance in the context of a culture that strongly emphasizes individual self-fulfilment. But we may still doubt whether the striking importance ascribed to families across very different cultural contexts could be explained in these terms.³⁵

Perhaps Brighthouse and Swift need not argue for the crucial importance of the parental fiduciary role to human flourishing as it may be sufficient only to show that this role contributes *differently* to one’s flourishing. However, this also becomes questionable once we observe that adults can exercise and develop fiduciary-related capacities through relationships with others who are not children and with children who are not their own. Recall that in Section 2 we discussed the different features that characterize, according to Brighthouse and Swift, the parent–child relationship and distinguished between their relevance in early childhood and the stages that follow. With this distinction in mind, we might notice that adults can experience fiduciary relationships with non-children which are quite similar to those with older (not yet adult) children. Consider, for example, the fiduciary relationship one may develop with

³³ Brighthouse and Swift, “Parents’ Rights,” 95, 96; see also Austin, *Conceptions of Parenthood*, 81.

³⁴ Brighthouse and Swift, “Parents’ Rights,” 95.

³⁵ Think, for example, of the Amish, ultra-Orthodox Jewish or Bedouin Arab cultures. While all three regard families as highly valuable, is it plausible that this is mainly because realizing fiduciary-related capacities is crucial to their adult members’ flourishing? How likely is it that members of those cultures will explain the value of families in fiduciary terms?

elderly people suffering from cognitive or physical dysfunction. It is likely to exhibit unequal power relations with unequal (yet some) ability to reciprocate, and quite often elderly people would not have the resources or opportunities to exit the relationship. Also, the fiduciary relationship might take place in an already intimately loving context, such as between elderly parents and their adult children, or contribute to the development thereof. It is true that this adult–elderly relationship is not likely to generate spontaneous and unconditional love of the sort one may receive from one’s very young child. But we already saw that the prevalence of this feature in subsequent stages of childhood is also questionable.

For Brighouse and Swift to maintain “that there is something distinctive” about the parent–child relationship “and that for many people nothing will fully substitute,”³⁶ the most promising line of argument seems to draw on the distinction between the child’s interests concerning her immediate well-being and those relating to her physical, cognitive, moral and emotional development.³⁷ They could argue that the distinctive value the relationship has for parents relates to the child’s developmental interests and the parents’ responsibility to meet them. While intimate adult–elderly relationships may involve a fiduciary role in an intimate context, only children open up a fiduciary experience that involves caring for the principal’s developmental interests.

This seems quite plausible as it stands. However, the problem in the argument arises once we observe that parents often share their fiduciary responsibilities with other non-parent adults,³⁸ thereby opening the way for the latter to have the experiences Brighouse and Swift talk about with children who are not their own. Non-parent caretakers such as nannies can have relationships with children which display, again especially in the early years, the same four features Brighouse and Swift use to characterize the parent–child fiduciary relationship. Children are extremely vulnerable

³⁶ Brighouse and Swift, “Parents’ Rights,” 100.

³⁷ See Harry Brighouse, “What Rights (If Any) Do Children Have?” in David Archard and Colin M. Macleod, (eds.), *The Moral and Political Status of Children* (Oxford: Oxford University Press, 2002), 40.

³⁸ By non-parent adults I refer to adults who are not parents of the relevant children, including adults who are parents of other children.

to their nannies' treatment and cannot reciprocate the power nannies have over them. They also cannot exit this sort of relationship on their own. (It is true that parents can remove children from their nannies, but the state can also remove children from their parents.) Nannies can share the parents' responsibility for both the immediate well-being of children and their developmental interests and this is likely to involve, as in the parent-child relationship, "coercing the child to act against her will" and "manipulating her will so that it accords with her interests."³⁹ Finally, they may also receive love from the children in their care that is "spontaneous and unconditional and, in particular, outside the rational control" of the children.⁴⁰ Thus, the satisfactions one derives, according to Brighthouse and Swift, from the parental fiduciary role are also available, contrary to their claim, in relationships other than the parent-child one, especially between non-parent caretakers and the children in their care.

To illustrate, the following paragraph from Brighthouse and Swift describing those satisfactions could easily apply to the relationships nannies may experience with children.

There is the enjoyment of the love (both the child's for oneself and one's own for the child) and the delight in the observations the child makes about the world: the pleasure (and sometimes dismay) of seeing the world from the child's perspective; enjoyment of her satisfaction in her successes, and of being able to console her in her disappointments.⁴¹

So even if we acknowledge that there is something distinctive in the fiduciary role adults play in the lives of children and that this something is particularly valuable for adults to experience, we still need to understand how the *family* type of relationship is different from the relationship that people with whom parents share their fiduciary

³⁹ Brighthouse and Swift, "Parents' Rights," 94.

⁴⁰ *Ibid.*, 93.

⁴¹ *Ibid.*, 94.

responsibilities may have with children. Otherwise, we would have to regard those others as additional or alternative parents to the children.⁴²

4. The missing piece: Identity

Further to the points raised above, I would now like to introduce the element of identity as a fundamental and distinctive feature of the parent–child relationship and explain how it resolves these questions. Here the *element of identity* refers to the process in families whereby parents reproduce some of their characteristics in their children and thereby establish a powerful sense of interconnectedness and continuity between their own identity and their child’s. Through the intimate process of upbringing parents can bequeath their cultural, national and religious horizons to their children. Children acquire their parents’ language, they are raised according to their parents’ values and beliefs, and they follow their parents’ practices. Some of the parents’ more personal characteristics also pass on to their children, such as favourite dishes, leisure activities, hobbies, body language and outward ‘look’.⁴³ The reproduction of those characteristics naturally creates a special bond between parents and children, a sense of identity interconnectedness. This should not be confused with two narrower contentions: it is

⁴² This is not to say those other caretakers cannot become parental figures to the children in their care, but to imply that their status as caretakers does not seem sufficient for us to regard them as such.

⁴³ For the element of identity to be established, it is not strictly necessary, albeit significant and normally helpful, that the reproduced characteristics between parent and child include genetic/biological characteristics (see also my point on biology’s significance below). Following from this, the use of inverted commas in the text intends to draw attention to how similarity in outward look, for example, need not be taken in a strictly physical sense. Sally Haslanger vividly pursues this point in “Family, Ancestry and Self: What is the Moral Significance of Biological Ties?” *Adoption and Culture* 2 (2009): 91-122: “[A] female friend with two sons once commented that my [transracially adopted] son Isaac and I look alike. I was surprised since no one had ever mentioned this before. She noticed my surprise and commented: ‘I’m told all the time that my sons look like me. I don’t think they look like me at all. They are *boys*. But that doesn’t seem to matter when people are looking for parent–child similarity. People don’t think Isaac looks like you because he’s Black and you’re White. Skin-color matters when people look for parent–child similarity. But if you actually attend to his features, he looks a lot like you.’ An important insight in this observation is that what similarities are salient is largely a matter of context, and some socially significant similarities are allowed to eclipse others that may be more deeply important” (ibid., 103).

not only that parents and children share certain aspects of their identities such as religion or culture, or that parents largely shape different facets of their children's identity. Rather, the claim about the sense of parent-child interconnectedness stresses that parents and children share certain features of their identities *because* the parent's identity actually shapes the identity of the child (though it is not the only thing that does).

Through its various facets, this process provides the child with a set of coordinates by which to begin orienting herself in a world of meanings. This is crucial to the child's identity as the family incorporates elements of the child's social and cultural milieu. At the same time, it also allows her to develop a sense of uniqueness through her connection to particular others. The naming of a child by its parents can be seen as a symbolic representation of the bridge the family offers between community and individuality. The name denotes the child's singularity while often drawing on the parent's culture and lineage.

This process also reshapes the parents' identity since by reproducing (some of) their characteristics in their children they come to view the latter as "part of a wider identity [they] have."⁴⁴ They observe themselves in their children and feel proud of their accomplishments and ashamed of their failures. And the fact that a child is a kind of continuity of her parent not only constitutes the child's identity but is usually very important for the parent herself. It was Locke who went so far as to claim that the strong desire of "continuing themselves in their posterity" is second only to people's desire for self-preservation.⁴⁵ But even if we do not accept this strong claim, the observation still stands that families offer both adults and children the experience of a powerful sense of interconnectedness and continuity, a feeling that is rarely (if ever) provided by other forms of relationship. This in turn may explain why the parent-child

⁴⁴ Robert Nozick, *The Examined Life* (New York: Simon and Schuster, 1989), 28. As I stress in the paragraph after the next, this should be taken metaphorically.

⁴⁵ John Locke, *Two Treatises of Government*, ed. Peter Laslett (Cambridge: Cambridge University Press, 1988), 206-7. Notice, however, that the parents' desire to continue themselves in their posterity does not serve in Locke as a justification for parental authority but for the bequeathal of their property to their children. As we saw in Chapter 1, Locke's account of parental authority is child-centred.

relationship makes a distinctive contribution to the flourishing of adults as well as children.

But perhaps we can go deeper than that. To hazard a speculation, we can suggest that through the parent–child relationship adults might have some response to what Francis Schrag has described as “our consciousness of our own insignificance and mortality,” our “sense of solitariness.” We hope that in our intimate relationships “we will be able to transcend these limitations of the human condition.”⁴⁶ And while Schrag is referring to intimate relationships in general, his claim is much stronger with respect to the particular intimate relationship between parents and children, in which personal characteristics are most typically reproduced and thus a sense of continuity is established.⁴⁷

Let us be clear regarding what the element of identity is *not*: it is not about children being mere extensions of their parents. In contrast to Charles Fried’s suggestion, even though parents generally play a key role in forming their child’s values and life plan, the parent–child relationship is *not* that of an “identity between chooser and chosen-for.”⁴⁸ And unlike Aristotle’s analogy, the child does not belong to his parents in the same way “the owner regards his tooth or hair.”⁴⁹ Children are separate human beings and as such enjoy an independent and intrinsic moral status. Therefore

⁴⁶ Francis Schrag, “Justice and the Family,” *Inquiry* 19 (1976): 193-208, at 207.

⁴⁷ Cf. John E. Roemer, “Jerry Cohen’s *Why Not Socialism?* Some Thoughts,” *Journal of Ethics* 14 (2010): 255-62, at 257: “Having children is of value to parents in large part because parenting achieves for them a kind of immortality: it is through one’s children that one may pass on one’s values and ideals”; and 258: “[The dissolution of the family] should be opposed for the reason mentioned earlier: that a great value to raising children is to pass on, through them, one’s values to the future. Adults count too.” This is related to, but somewhat different from, the claim I am trying to make. Here the focus is on parents continuing their values in their children whereas my claim is about parents ‘continuing themselves’ in their children. Doing the former is, of course, part of achieving the latter but I do not think that passing on one’s values to the future is in itself a distinctive contribution of the parent–child relationship; this can also be found in a teacher–student relationship, say, or in collective upbringing. A view that comes closer to mine is that in Edgar Page, “Parental Rights,” *Journal of Applied Philosophy* 1 (1984): 187-203, according to which parents have a creative role “directed to the production of a child or person in their own likeness in whom they see the continuity of ‘something of themselves’” (ibid., 201). Yet for reasons outlined in the following paragraph of the text, I find his framing of this process in terms of a producer–product relation and the account of parental rights as analogous to property rights, to be misleading, if not wrong. I think that it is more accurate to think of this process as giving rise to a distinctive *intimate relationship*.

⁴⁸ Charles Fried, *Right and Wrong* (Cambridge, MA: Harvard University Press, 1978), 152.

⁴⁹ Aristotle, *Nicomachean Ethics*, 158.

the extent to which parents should be allowed to shape their children's lives and the means they use to do this should be limited. This is also why the process of characteristics passing on to children has somewhat unpredictable and non-static results as children develop their own personalities.⁵⁰

Until now I have discussed the element of identity as a distinct feature of the parent-child relationship. I have yet to show, however, that it is a *fundamental* feature of the relationship which gives it value in its own right. From a child-centred perspective, the importance of this element has occasionally been acknowledged, especially for the child's moral development.⁵¹ However, its significance from a parent-centred perspective is usually played down, sometimes even ignored completely. This is reflected in the view that "a good parent should be able to sustain a successful relationship *without any particular shared interest or values.*"⁵² A noteworthy concession is Brighthouse and Swift's later view that "without substantial opportunity to share himself intimately with his child *in ways that reflect his own judgments about what is valuable*, the parent is deprived of the ability to forge and maintain an intimate relationship."⁵³ Yet the element of identity is still considered neither fundamental nor intrinsically valuable. It is primarily as a contributor to forging and maintaining the intimate nature of the parent-child fiduciary relationship that Brighthouse and Swift grant its value here.

I disagree with this view and contend that the element of identity is a fundamental feature which underlies the distinctive value the relationship has from a parent-centred

⁵⁰ Another reason for its unpredictability is that it is not a one-to-one process. It is at least a two-to-one process, if only genetically, and the exact blend of what is passed on is beyond anyone's control. But families never operate in complete isolation and so the process is also affected by the surrounding environment. The combination of all these factors is what makes our identities so complex and, in certain respects, mysterious.

⁵¹ See Colin M. Macleod, "Conceptions of Parental Autonomy," *Politics & Society* 25 (1997): 117-40; Claudia Mills, "The Child's Right to an Open Future?" *Journal of Social Philosophy* 34 (2003): 499-509; and Robert Noggle, "Special Agents: Children's Autonomy and Parental Authority," in Archard and Macleod, *The Moral and Political Status of Children*.

⁵² Brighthouse and Swift, "Parents' Rights," 105; emphasis added. See also Clayton, *Justice and Legitimacy in Upbringing*, 117-18.

⁵³ Brighthouse and Swift, "Legitimate Parental Partiality," 57; emphasis added.

perspective. Note that this counterclaim is not concerned with people's *motivation* to have children and establish families. People want children for different reasons – as an expression of love for their partner, to better the world through adopting a disadvantaged child, to raise another pair of hands for the farm, and so forth. Neither does my counterclaim imply that the process of establishing the element of identity is necessarily intentional or self-conscious. This being said, it does take place in families and does account for their distinctive value. So, now let us return to my three issues with the fiduciary-focused model and show how the suggestion that identity accounts for the distinctive value of the parent–child relationship is able to resolve them.

To recap, the first problem concerned the significance that many attach to biological parenthood. It was argued that the interest in playing a fiduciary role cannot explain the significance often ascribed to playing this role specifically for one's biological children. But, if we recognize the element of identity as an independent interest then a plausible explanation emerges. The biological connection when present serves as an initial layer of interconnectedness and continuity between parent and child: for the child the parent represents a biological source; for the parent the child represents biological continuity.⁵⁴ This is a significant and normally helpful starting point in establishing the element of identity between parent and child.⁵⁵ Let me be clear, it is neither strictly necessary, as successful cases of adoptive families prove, nor by itself does it determine the quality of the relationship, which is what ultimately matters. Yet still, it is conducive

⁵⁴ Recent philosophical discussions of artificial reproduction have emphasized this point from a child-centred perspective. See J. David Velleman, "Family History," *Philosophical Papers* 34 (2005): 357-78; Brenda Almond, *The Fragmenting Family* (Oxford: Oxford University Press, 2006); Jacqueline A. Laing, "Artificial Reproduction, Blood Relatedness and Human Identity," *Monist* 89 (2006): 548-66. Yet it no less holds from the perspective of parents. As Almond observes, "given the choice, people seeking assisted reproduction overwhelmingly choose to have children who are genetically related to them" (*The Fragmenting Family*, 119).

⁵⁵ Normally helpful but not always as there are cases where a biological connection between parent and child might have negative and even destructive consequences. A biological mother may be unable to develop a healthy relationship with a child conceived through rape as the child may serve as a reminder of her trauma. Even in such cases, however, it is not the biological connection per se that is destructive but the nature of the act that established it.

to experiencing the distinctive quality of that relationship, i.e. the sense of interconnectedness and continuity between parent and child.⁵⁶

The second problem raised the point that parents often continue to be involved in their children's lives after their fiduciary role is over, and deeply care whether their adult children choose to follow their personal core values, beliefs, and practices. Now, if we hold that the element of identity is intrinsically valuable to the parent-child relationship then the explanation for this seems quite straightforward. When a child is raised according to her parent's values, beliefs and practices the child's identity becomes interwoven with the parent's identity in a powerful way. So if a child breaks away from her parent's values and practices it affects that parent's sense of interconnectedness and continuity. If the element of identity is valuable in itself it is understandable if parents want to influence their adult children's life plan to ensure that this sense of continuity lasts (or, at least, it is understandable why they feel distressed when it is threatened).⁵⁷ Claiming that the parents' interest in their adult children's life plans makes sense does not imply, however, that parents should have authority over

⁵⁶ The conjecture offered by Niko Kolodny for why biological parenthood matters fits quite nicely with my account of the element of identity and is worth quoting in some length here: "The view of egoistic concern (concern for persons who, in normal cases, are identical to oneself)... holds that a person at one time has reason for egoistic concern for a person... at another time only if the former is, or has, the same, or enough of the same, organism, or relevant organs, as the latter. And an organism, or organ, at one time is identical with an organism, or organ, at another time only if, or just when, the life, or functioning, of each is a stage of a continuous biological process, governed by the same genetic code. The same is true... of the relationship between genetic parent and genetic child. Both relationships consist in continuous biological processes, governed by the same genetic code. Needless to say, my relationship to my genetic child belongs to a different dimension of importance from my relationship to myself at other times. The former is a relationship to a separate and independent person; I do not literally live on through my genetic child, or have the sort of authority over him or her that I enjoy over myself. But, as we have just seen, there is a natural way to see them as counterparts. Again, both of these relationships consist in continuous biological processes, governed by the same genetic code... Perhaps what is reflected by the meaning that we attach to our relationships to our genetic children is the incipient sense of a kind of incoherence in attaching paramount importance to one's biological continuity with this person – one's later self – but none at all to one's biological continuity with this other – one's genetic child" ("Which Relationships Justify Partiality? The Case of Parents and Children," *Philosophy and Public Affairs* 38 [2010]: 37-75, at 70-1).

⁵⁷ Even if it does not last, parents have presumably derived value from it in earlier stages. I am not suggesting here that for parents to derive value from the element of identity it has to last as long as they live; only that unlike the interest in playing a fiduciary role, the interest in experiencing the element of identity extends beyond the period of upbringing.

their adult children. The fiduciary-focused model is right in framing the issue of parental *authority* within the context of children not yet having developed their human capacities to a sufficient level.

Finally, we come to the problem prompted by the considerable weight that proponents of the model give to developing and exercising the parents' fiduciary-related capacities. We asked: If parenting is valued mainly because it allows adults to exercise those fiduciary-related capacities, why do people tend to reject the substitute of other fiduciary or quasi-fiduciary relationships for the parent–child relationship? Why do people who experience obstacles in having children fight to have them through fertility treatment, surrogacy and adoption and do not normally accept fiduciary roles for the elderly or for the children of others as a substitute for parenting?

The fiduciary aspect of the parent–child relationship is not the distinctive element of that relationship. It is identity: the process whereby adults reproduce some of their characteristics in the children they raise and thus establish a powerful sense of interconnectedness and continuity with them. Usually this cannot be accomplished between adults since their identity has already been shaped. Thus the intimate relationship with children offered by the family context is an almost unique platform for developing this type of interpersonal bond. In a similar vein, the element of identity also explains why people such as nannies and other quasi-fiduciary figures with whom parents share their fiduciary role are not regarded as family even when they have an intimate relationship with the children. This is because nannies and similar others do not usually establish a sense of continuity with the children in their care through reproducing their own characteristics in them. While these relationships allow adults to develop and exercise fiduciary-related capacities they do not involve the element of identity. And that is what seems to distinguish them from the parent–child relationship.

5. Potential objections

Before concluding I wish to preempt two potential objections to the alternative account suggested here. The first is that it is wrong in stressing the parents' interest since this may justify parents treating their children as a mere means to an end rather than an end in themselves. According to this objection, parenting should be guided by the child's interest and the alternative account obscures the obligations of parents in this regard. Now if this is meant to imply that the alternative account goes against the child's interest then the objection is simply wrong since, as has already been stated, experiencing the element of identity is also in the interest of the child. If, alternatively, the objection is that the alternative account does not *exclusively* follow the child's interest and allows some departure from the child's *best* interest then, first, it is worth noting that it should not be specifically directed at the proposed alternative account, but at all accounts that suggest that the parents' interest – regarding intimacy, fiduciary relations or identity – have some justificatory role with respect to parental authority. Therefore my model is no worse than the fiduciary-focused model which also goes beyond the child's interest and, in accommodating the parents' interest, to some extent tolerates compromising the child's *best* interest. Furthermore, it is difficult to see how anyone considering the initial decision to bring a child into existence could hope to avoid this objection. One's choice to have a child must be grounded, it seems, in an interest or consideration outside the child for the obvious reason that at that stage there is still no child to whom any interests or considerations may be attached. My main point, however, is that adopting a strictly child-centred perspective does not resolve the issue but represents it, only this time from the parents' standpoint. A view of parents as a mere means to their children's ends is also unacceptable and therefore even child-centred accounts of upbringing usually hold that uninterested parties should *not* be forced into parenting.⁵⁸ Adults' interests in parenting do count, and this leaves us with

⁵⁸ See, for example, Samantha Brennan and Robert Noggle, "The Moral Status of Children: Children's Rights, Parents' Rights, and Family Justice," *Social Theory and Practice* 23 (1997): 1-26, at 12; Peter

the challenge of identifying the interests of children *and* parents that justify the familial framework for raising children. It is in response to this challenge that I argue that the fiduciary-focused model overlooks the interest in an interpersonal bond which includes the element of identity; an interest that underlies the distinctive value of the parent–child relationship from a parent-centred perspective.

The second objection takes up the previous reply and questions whether the element of identity really does make the parent–child relationship different from other interpersonal relationships. After all, people share aspects of their identity with non-kin others such as compatriots and members of their cultural or religious group. Identity-based relationships can also be found in clubs, workplaces and professional associations. How then can I cogently claim that the parent–child relationship is distinctive due to the element of identity? To understand how, recall the description of the element of identity. In the beginning of this section we suggested that this element refers to a process in which some of the parents’ characteristics are reproduced in their children and it is the fact that *personal* characteristics are also reproduced and not just the collective features of a particular group that makes the difference here. This difference arises because families are the site of intimate, to some extent private upbringing as opposed to more collective forms of upbringing. Thus in families people share their lives – not just this or that specific aspect of their lives – with particular others and form attachments not usually established in other interpersonal relationships.

Some may suggest that if reproducing personal characteristics marks the uniqueness of the parent–child relationship there would be no harm in limiting parental conduct so that parents can only transmit their peculiar characteristics to children but have no say in regard to the more collective features to be transmitted.⁵⁹ There is some basis for this argument as parents sometimes let others transmit certain values, beliefs and practices to their children without feeling particular loss. But two qualifications are

Vallentyne, “Rights and Duties of Childrearing,” *William and Mary Bill of Rights Journal* 11 (2003): 991-1009, at 998.

⁵⁹ For an argument along somewhat similar lines – that parental conduct drawing exclusively on a comprehensive doctrine should be avoided – see Clayton, *Justice and Legitimacy in Upbringing*, Chapter 3.

needed. As a rule no *clear-cut* distinction can be made between the collectively-shared and the more peculiar features of a person's identity. Some personal characteristics are built on collective features such that without the latter the former would make no sense (or at least a very different sense from the original). Examples are special favourite dishes which are served on public festivals; certain interpretations of commonly-held values and beliefs; the precise ways of performing rituals and practices and the chosen places for holding them (*this church, that synagogue*). So, if we want to allow parents to bequeath (some of) their personal characteristics to their children we must also allow them to provide the relevant more general foundations for doing this. Secondly, some collectively-shared features may be so constitutive of a parent's identity that no sense of interconnectedness and continuity could be established unless these were also shared with the child. Therefore, even if some personal characteristics pass on, the fact that more constitutive features are not shared may overshadow the relationship and might even bring it to an end. Although this depends on the specific identity structure of individuals, we should acknowledge that in some cases a successful parent-child relationship *cannot* be sustained without sharing particular beliefs, values or practices that are constitutive of the parent's identity.

6. Conclusion

The fiduciary-focused model tries to account for "the distinctive and very important goods for which the family is indispensable."⁶⁰ I have argued that it misses out one such good for parents, namely the element of identity. This is a fundamental aspect of the parenting experience, and is responsible for its distinctive value. I have shown that by shifting the centre of gravity from the element of identity and placing it on fiduciary responsibility, the model takes us too far from our understanding of the parent-child relationship. It cannot maintain the biological dimension to be somewhat significant, it

⁶⁰ Brighthouse and Swift, "Legitimate Parental Partiality," 56.

overlooks the parents' interest in their adult children's lives, and most importantly it fails to explain how the relationship is essentially different from other fiduciary relationships. In making my argument and relocating the uniqueness of the parent-child relationship in the element of identity I do not deny its fiduciary dimension or intimate nature. What I have done is to argue that the element of identity is what makes it valuable in a unique way compared to other fiduciary intimate relationships.

The implications of the argument for what justice requires of parents will become evident in the next chapter. But to conclude my discussion of Brighouse and Swift let me locate the prospective bearings that my disagreement with them has on what is morally permissible for parents to do with respect to their children. Brighouse and Swift maintain that their fiduciary-focused model justifies parental rights that are fundamental (i.e. justified by the benefit they bring to the right-holder rather than to others), limited in scope, and conditional on meeting the children's interests to some threshold.⁶¹ Now, although the account advanced in this chapter regarding the value of the parent-child relationship substantially differs from the fiduciary-focused model, this does not necessarily mean that its translation to parental rights would differ in *structure* as it may also justify fundamental, limited and conditional rights. What I have disputed is the contention that a good parent should be able to establish and sustain a relationship with his child without relying on any particular set of values, beliefs and practices. My argument suggests the reverse: the fact that a parent transmits his *own* moral and cultural horizons along with more idiosyncratic features to his child is what makes the parent-child relationship distinctive from other adult-child relationships. As a result, parental rights derived from my account are likely to have a wider scope than those derived from Brighouse and Swift's, so that the parents' own values, beliefs and practices are privileged not only in fact but also in principle. However, this does not mean that parents can do whatever they want to their children, and the account offered here should not be taken as a charter for parents' all-encompassing or unconditional rights over them.

⁶¹ Brighouse and Swift, "Parents' Rights," especially at 86-9.

Chapter 4

A Principle of Family Justice

To undertake this responsibility – to bestow a life which may be either a curse or a blessing – unless the being to whom it is to be bestowed will have at least the ordinary chances of a desirable existence, is a crime against that being.

(John Stuart Mill)¹

1. Introduction

The contextualist approach we are here adopting tells us first to interpret the context of distribution and then, in light of that interpretation, to determine what principle of justice is appropriate in that context.² The previous chapter pursued the first phase of this approach, and interpreted the parent–child relationship as an intimate form of upbringing which features the *element of identity*, a strong sense of interconnectedness and continuity between the identities of carer and child. This chapter asks what justice requires in this specific context; the challenge, as Miller puts it, is to show “why a certain mode of social relationship makes the corresponding principle of justice the appropriate one to use.”³

A good place to start is the concept of upbringing. We may consider it as the process of providing children with what they *need*. Jeffrey Blustein suggests that those responsible for children’s upbringing must conform to the norms or standards that are laid down by needs-statements of the form ‘a child needs x’ and points out that these statements are in many respects quite different from those concerning adults.⁴ One

¹ John Stuart Mill, *On Liberty*, in *On Liberty and Other Essays*, ed. John Gray (Oxford: Oxford University Press, 1991), 120.

² David Miller, “Two Ways to Think About Justice,” *Politics, Philosophy & Economics* 1 (2002): 5-28, at 11.

³ David Miller, *Principles of Social Justice* (Cambridge, MA: Harvard University Press, 1999), 34.

⁴ Jeffrey Blustein, *Parents and Children: The Ethics of the Family* (New York: Oxford University Press, 1982), 119-20.

such difference is that children have both immediate needs as children, and developmental needs as future adults. More generally, when we say that someone – a child, in our case – needs X we mean that it is necessary for that person to have X if he or she is not to be harmed.⁵

Thinking about upbringing in terms of meeting children's needs, points towards a sufficiency principle of justice. Such a principle would specify what to distribute to children and up to what level to avoid them being harmed. The intuitive appeal of the idea of sufficiency in this context can be observed through considering a priority view alternative of the form: Justice requires parents to improve their children's position the best they can.⁶ In some cases meeting this principle would entail advancing the child's position above and beyond meeting her needs, and thus would exceed the context of upbringing. Think of a child of a Bill Gates-like parent. It seems absurd to claim that the child would have a claim of justice against her parent if the latter didn't improve the former's position the *best* he could. Putting it differently, it does not seem plausible to contend that it is an injustice if the children of the super-rich turn out to be only mildly rich. The same consideration also holds against a strict equality principle between parent and child. Yet this leaves us with a wide range of sufficientarian candidates for the principle we seek, and is still far from being a conclusive defence of sufficiency.

In this chapter I put forward and defend the following sufficiency principle for the context of the parent–child relationship: Justice requires parents to provide their children with the conditions to achieve a set of functionings up to the level which allows them to lead a decent life in terms of the parents' social and cultural context. In Section 2 I introduce the idea of 'functioning' and suggest a list of categories of functionings on which we should focus in the context of the parent–child relationship. Section 3 argues why 'conditions for functioning' is the appropriate metric of justice in this context. Sections 4 and 5 defend the threshold level of 'allowing a decent life in terms of the

⁵ Miller, *Principles of Social Justice*, 206-7.

⁶ In general, the priority view holds that benefiting people matters more the worse off these people are. I assume here that, according to the relevant metric of justice, children are in a worse-off position than their parents.

parents' context' as the one in which the demands of family justice are fully met. In Section 6 I consider and reject three main alternatives to the 'conditions for functioning' metric. Section 7 concludes the chapter.

2. Children's functionings: The focus of family justice

What parents owe their children as a matter of justice is best understood, so I argue, in terms of functionings. This is a key term for the capability approach developed most prominently by Amartya Sen and (later) by Martha Nussbaum to offer a metric for interpersonal comparisons and, more specifically, justice judgments.⁷ Functionings are taken to be "parts of the state of a person – in particular the various things that he or she manages to do or be in leading a life."⁸ In other words, a functioning of a person is a certain mode of human 'doing' or 'being.' Now the emphasis of the capability approach, as its name tells us, is not on the achieved functionings of the person but on her capability of achieving different sets of functionings. The motivation behind the shift from achieved functionings to capabilities of achieving functionings is to allow the person the freedom to choose her own way of life. The person as an autonomous agent should be free to choose which functionings she wants to achieve and to what degree

⁷ The literature on the capability approach is voluminous. See, most notably, Amartya Sen, "Equality of What?" in S. M. McMurrin (ed.), *The Tanner Lectures on Human Values*, vol. 1 (Salt Lake City: University of Utah Press, 1980); "Rights and Capabilities," in his *Resources, Values and Development* (Cambridge, MA: Harvard University Press, 1984); "Well-Being, Agency and Freedom: The Dewey Lectures 1984," *Journal of Philosophy* 82 (1985): 169-221; "Justice: Means versus Freedoms," *Philosophy and Public Affairs* 19 (1990): 111-21; *Inequality Reexamined* (Oxford: Oxford University Press, 1992); Martha C. Nussbaum, *Women and Human Development: The Capabilities Approach* (Cambridge: Cambridge University Press, 2000); *Frontiers of Justice: Disability, Nationality, Species Membership* (Cambridge, MA: Harvard University Press, 2006); Nussbaum and Sen (eds.), *The Quality of Life* (Oxford: Clarendon Press, 1993); and, most recently, Sen, *The Idea of Justice* (Cambridge, MA: Harvard University Press, 2009), Part 3, and Nussbaum, *Creating Capabilities: The Human Development Approach* (Cambridge, MA: Harvard University Press, 2011).

⁸ Amartya Sen, "Capability and Well-Being," in Nussbaum and Sen, *The Quality of Life*, 31. For an important distinction between broad and narrow understandings of functionings in Sen's writings, see G. A. Cohen, "Equality of What? On Welfare, Goods, and Capabilities," in Nussbaum and Sen, *The Quality of Life*, 21-3. In what follows I always assume the broad understanding that includes not only the person's actions but also her states of being.

she wants to develop them, and so justice ought to be concerned with her capability of achieving different sets of functionings rather than with her actual achievement of a particular set. In what follows I will argue that, with respect to children, an emphasis on capabilities is misplaced and we should instead focus on achieved functionings. But first let us try to single out the functionings most relevant to the context of the parent–child relationship.

Our starting point is Martha Nussbaum’s list of “central human functional capabilities,” which was reviewed and extended through qualitative empirical research by Jonathan Wolff and Avner de-Shalit.⁹ We should first note that there is some difference between Nussbaum’s project and that of Wolff and de-Shalit in terms of the supposed purpose of the list. Nussbaum is interested in forming a list of human capabilities that should be, as a matter of justice, the object of universal concern, whereas Wolff and de-Shalit use the list to specify different components of advantage but avoid taking a stand on whether and to what extent the achievement or loss of these are a matter of justice.¹⁰ My project does not accord with either of these as it is concerned with the matter of justice in the specific context of the parent–child relationship. Nonetheless I do not regard this as an obstacle for using the list as a rich source for identifying relevant categories of human functioning.

Nussbaum’s original list included ten categories to which, in view of their empirical findings, Wolff and de-Shalit added four. As Nussbaum’s list, albeit universal in scope, was formed with special attention to developing countries (and more specifically to the political and social context of India), and as Wolff and de-Shalit’s research was conducted in the UK and Israel – both developed yet very different countries – the extended list does enjoy some cross-cultural credibility. But which categories are the relevant ones to the parent–child context? While every category may be important in one stage or another of a person’s life, here we wish to identify those relevant to our

⁹ For Nussbaum’s list, see her *Women and Human Development*, 78-80. For Wolff and de-Shalit’s findings, see their *Disadvantage* (Oxford: Oxford University Press, 2007), especially at 36-62, 103-7.

¹⁰ See Nussbaum, *Women and Human Development*, 4-11; Wolff and de-Shalit, *Disadvantage*, 194n.

specific context. When doing this, we need to ensure that the chosen categories satisfy the following conditions: (I) they are relevant to the period of childhood; (II) they are relevant to the sphere of the family, i.e. it is reasonable to hold parents responsible for their children's functioning in those categories;¹¹ (III) they can accommodate a wide social and cultural diversity;¹² and (IV) they are of such importance as to generate claims of *justice*.¹³ Bearing these four conditions in mind I wish to suggest that justice in the family is concerned with the following categories of functioning.¹⁴

- (I) *Life*. Not die prematurely, or before one's life is so reduced as to be not worth living.
- (II) *Bodily health*. Have good health, including reproductive health; be adequately nourished; have adequate shelter.
- (III) *Bodily integrity*. Have one's bodily boundaries treated as sovereign, i.e. be secure against assault, including sexual assault and abuse, and domestic violence.
- (IV) *Sense, imagination and thought*. Use the senses, imagine, think and reason – and do these things in a way informed and cultivated by an adequate education. Use imagination and thought in connection with experiencing and producing self-expressive works and events. Have pleasurable experiences and avoid non-necessary pain.
- (V) *Emotions*. Have attachments to things and people outside ourselves; love those who love and care for us, grieve at their absence; in general, love, grieve, experience longing, gratitude and justified anger. Not having one's emotional

¹¹ This does not necessarily imply *exclusive* responsibility. In the following section I explain what the parental responsibility amounts to.

¹² This condition is important in view of our characterization of the family context as an intimate form of upbringing in which the element of identity is established. I elaborate on this point in Section 4 below.

¹³ This can be thought of as a condition of urgency. On the relation between justice and urgency, see T. M. Scanlon, "Preference and Urgency," *Journal of Philosophy* 72 (1975): 655-69. Another way of thinking about this condition is through the aforementioned notions of need and the avoidance of harm, in which children's functionings are not a matter of mere advantage or benefit but of necessity.

¹⁴ The phrasing is borrowed from Nussbaum's original list and adjusted as explained in the text that follows.

development blighted by overwhelming fear and anxiety, or by traumatic events of abuse and neglect.

- (VI) *Affiliation*. (i) Live with and toward others, recognize and show concern for other human beings, engage in various forms of social interaction; have the capability for both justice and friendship. (ii) Have the bases of self-respect and non-humiliation; be treated as a dignified being.
- (VII) *Play*. Laugh, play and enjoy recreational activities.

Some further explanatory and justificatory remarks are now in order. First, the purpose of the suggested list is more illustrative than argumentative. I do not pretend to make a conclusive case for the listed categories and specific functionings, but aim merely to make more concrete the discussion of the proposed principle of justice through suggesting a set of functionings to which the principle may plausibly refer.

Second, for reasons that will be discussed in the following section, the terminology of the list is one of functionings rather than of capabilities. Thus, for example, what matters from the point of view of family justice is that children *are* adequately nourished and *have* adequate shelter; not merely that they are able to be adequately nourished and can be adequately sheltered.

Third, seven of the extended list's entries are omitted here,¹⁵ as well as some of the elaborating notes within the included categories. They are excluded because they do not satisfy one or more of the four conditions stated above. Thus, *control over one's environment* – in terms of Nussbaum's political and economic conception – is only of limited relevance to children;¹⁶ *understanding the law* is not something that parents can always be held responsible for (as in cases of immigrants who are not familiar with the local law themselves); and *practical reason* seems to be too embedded in a specific

¹⁵ These are *practical reason*; *relatedness to other species*; *control over one's environment*; *doing good to others*; *living in a law-abiding fashion*; *understanding the law*; *understanding and speaking the local language*.

¹⁶ To be sure, children's upbringing needs to allow them to have this capability *as adults* and this involves their achieving during childhood a set of relevant functionings, mostly related to the categories of *sense, imagination and thought* and *affiliation*. But *control over one's environment* is not itself a capability (and surely not an achieved functioning) that they should (or even, in early childhood, can) have as children.

liberal tradition.¹⁷ Other categories are omitted because they do not seem to be of such importance as to generate a *justice* requirement of parents. This, I believe, is the case of the *relatedness to other species* and the *doing good to others* functionings.

Fourth, those omissions might create an impression of arbitrariness in forming the current list. How, the reader may ask, is the functioning of *relatedness to other species* less crucial than *play*? Notice, however, that this list corresponds quite well with a shorter list of six “most important” or “high-weight” functionings that emerged from Wolff and de-Shalit’s research.¹⁸ Five categories of functionings appear in both lists. The only entry appearing in Wolff and de-Shalit’s shortlist but not included here is *control over one’s environment* which, as already mentioned, does not seem to have much relevance to the phase of childhood (at least in its earlier stages). The two categories that are included here but were not shortlisted in the research, namely *emotions* and *play*, are ones that are specifically important in the context of upbringing (both as immediate and developmental needs of children) but may be regarded as less important in other contexts such as citizenship.¹⁹ I think that the considerable convergence between my suggested list and Wolff and de-Shalit’s shortlist, and the fact that the

¹⁷ In Nussbaum’s account, this category means to be able “to form a conception of the good *and to engage in critical reflection about the planning of one’s life*” (*Women and Human Development*, 79; emphasis added). Referring to their interviewees’ responses to this category, Wolff and de-Shalit write: “Here, more than elsewhere, the suspicion of the philosophers’ intellectualist bias raised its head. Some interviewees were bemused about how this could be considered an important functioning when so few people appear able to achieve it. Another pointed out that what seems to be at stake here is an idea of self-determination, yet that need not take the form of second order critical reflection” (*Disadvantage*, 53-4).

¹⁸ The shortlisted categories of functionings were *life; bodily health; bodily integrity; sense, imagination and thought; affiliation; control over one’s environment*.

¹⁹ I initially thought that *play* could be regarded as part of *sense, imagination and thought*. But after further reflection on how a child’s life would look without the functioning of play I am now inclined to list *play* as a discrete category. Consider, for example, the description of John Stuart Mill’s upbringing in his *Autobiography* (London: Penguin, 1989), especially Chapter 1; and Nussbaum’s description of the childhood experience of girls in some cultures in *Women and Human Development*, 90-1.

A deeper relation between play and childhood is offered in Tamar Schapiro’s Kantian account of childhood: “By engaging in play children more or less deliberately ‘try on’ selves to be and worlds to be in. This is because the only way a child can ‘have’ a self is by trying it on... [Thus] play serves an essential function in children’s lives which it doesn’t serve in the lives of either animals or adults. Play is children’s form of work, for their job is to become themselves” (“What Is a Child?” *Ethics* 109 [1999]: 715-38, at 732).

deviations from it are explained by the specific context to which my suggested list is meant to apply, gives it further credibility and reduces the sense of arbitrariness that might initially arise.

Lastly, I should make clear that I do not regard this list as exhaustive. While regarding the functionings under those categories to be the subject matter of justice between parents and children I do not wish to rule out the possibility that other categories might be found relevant. However I consider it to be a merit of the list that it is relatively short and concise. No doubt there are many other functionings that, although advantageous, do not appear on the list (e.g. knowing how to swim or cycle, commanding a foreign language). But before extending the list by adding (some of) them we should make sure they satisfy all the four conditions specified above.

Before turning to discuss the actual demands of family justice with regard to those functionings it is worth following Wolff and de-Shalit one step further in emphasizing that the listed functionings are meant to be *secure* functionings. An achieved functioning becomes insecure when there is “a threat to the continuous enjoyment of the functioning.”²⁰ What matters is not only that certain functionings are being achieved and sustained but also that they are not being unduly exposed to threats. Thus, a child with adequate shelter can still have a claim of justice against her parent who seriously threatens to throw her out of the house. This is in part because living under such a threat may reduce her *emotions* functioning by undermining her attachments to the people around her. But the claim of justice is first and foremost due to the direct effect of the threat on her functioning of having shelter (as part of the wider category of *bodily health*), that is, by dint of it not being secure. For simplicity I make use of the notion of functioning but it is important to keep in mind that I am, in fact, referring to secure functioning.

²⁰ Wolff and de-Shalit, *Disadvantage*, 68. See also their third chapter for the analysis of risk which leads them to the concept of secure functioning.

3. Conditions for functioning: The metric of family justice

In the previous section I identified seven categories of functionings as being most relevant from the point of view of family justice. But what does this imply? What does justice actually require of parents with respect to those functionings? It is to this question I now turn. The capability approach, as originally developed by Sen, puts a great deal of emphasis on the *ability* of a person to achieve certain valuable functionings and is less concerned with their actual achievement. Its primary focus is on the person's opportunities²¹ or freedoms to function and so it does not regard as problematic a person choosing not to achieve or sustain this or that functioning. But this focus on opportunities and choice instead of achieved functionings seems inadequate when dealing with children. This will become clear by addressing the two types of needs children have: immediate and developmental.

With respect to children's immediate needs the notion of opportunity or freedom seems entirely misplaced. As Colin Macleod puts it, we "should not focus on whether children can choose to have a secure and loving family but on whether children have a secure and loving family," and similarly, "what matters for children is not the opportunity to achieve health or being able to have emotional attachments but being healthy and having emotional attachments."²² In fact it is not at all clear that 'providing *an opportunity* to achieve a functioning' can have any substantive meaning when it comes to children. Take, for example, 'opportunity to achieve health' which may be interpreted as including one or more of the following directives:

²¹ As Sen makes clear, capabilities are something like *real* or *substantive* opportunities and therefore should not be understood in more restricted terms as availability of some *particular* means or non-applicability of some *specific* barriers or constraints (*Inequality Reexamined*, 7). Richard Arneson similarly defines opportunity as "a chance of getting the good if one seeks it," in his "Equality and Equal Opportunity for Welfare," in Louis P. Pojman and Robert Westmoreland (eds.), *Equality: Selected Readings* (New York: Oxford University Press, 1997), 233. For simplicity, in the text I keep to the notion of opportunity; but see note 27 below for further comment on these distinctions.

²² Colin M. Macleod, "Primary Goods, Capabilities, and Children," in Harry Brighouse and Ingrid Robeyns (eds.), *Measuring Justice: Primary Goods and Capabilities* (Cambridge: Cambridge University Press, 2010), 185.

- A parent ought to take his child to see the doctor *if* the child wants to go.
- A parent ought to buy a necessary medication for his child *if* the child asks him to.
- A parent ought to provide adequate nutrition for his child *unless* the child favours an unhealthy diet.
- A parent ought to provide warm clothing for his child *unless* the child prefers going naked.

But the first clause in each of these sentences seems unconditionally valid. These are situations in which – to follow Cohen’s critique of Sen – “what matters most is the level of functioning (for which certain goods need to be provided) rather than having a capability that can be exercised or not.”²³ So although “babies can sometimes be amazingly cogent, choosy and insistent,”²⁴ and surely older children can be much more so, this does not seem to justify shifting all the way from ‘achieved functioning’ to ‘opportunity for functioning’.²⁵

We now turn to consider children’s developmental needs. Even if we agree with Sen that with regard to adults their capabilities matter more to justice than achieved functionings, developing those capabilities would still require them to actually practise the functionings throughout childhood. As Nussbaum recognizes,

exercising a function in childhood is frequently necessary to produce a mature adult capability. Thus it seems perfectly legitimate to require primary and secondary education, given the role this plays in all the later choices of an adult life. Similarly it seems legitimate to insist on health, emotional well-being, bodily integrity and dignity of children in a way that does not take their choices into

²³ Cohen, “Equality of What?” 20. On this point, see also the discussion in Richard J. Arneson, “Perfectionism and Politics,” *Ethics* 111 (2000): 37-63, at 59-63.

²⁴ Sen, “Capability and Well-Being,” 44.

²⁵ In an earlier paper, Sen seems to share this view (at least with respect to *young* children). “When the requirement of careful assessment [of aims, objectives, allegiances, etc.] cannot be fulfilled (e.g., in the case of young children, or with persons mentally ill in ways that rule out such assessment), the agency aspect will be, obviously less important... This would not, of course, in any way compromise the importance of their *well-being aspect*. Indeed in the absence of the relevance of their agency aspect, it is their *well-being achievement* that would uniquely command attention” (“Well-Being, Agency and Freedom,” 204; emphasis in original).

account... Again: functioning in childhood is necessary for capability in adulthood.²⁶

Thus, focusing on the developmental needs of children as future adults also indicates that children's actual achievement of functionings matters, not merely their having opportunities for functionings.

These considerations suggest that simply providing children with functioning opportunities does not exhaust the demands of family justice. But neither should we rush to conclude that what justice requires of parents is that their children achieve certain functionings. This would be excessive; after all, it is the *child's* functioning, and only the child may achieve it. Even if parents provide their children with food for adequate nutrition the child might still refuse to eat it. Despite being offered a secure shelter a child might keep running away from home. A child can be asked to play but still be withdrawn and emotionally remote. But in these situations and others like them, parents are required to take action and they are required to do so as a matter of justice. It is not enough to provide an opportunity for functioning, so parents need to orient themselves towards their children's actual achievement of functionings and *actively* help their children when they face obstacles to that attainment.

I therefore think what justice requires of parents is best understood in terms of *conditions for functioning*. This seems to indicate more accurately the space in which the demands of family justice are located, as parents are required to do more than provide their children with opportunities for functionings and to be engaged with their actual achievement, but are not to be held responsible for the achievement itself.²⁷ Some of these conditions are nicely captured by Macleod's idea of "various forms of creative stimulation of distinctive human faculties," exposing the children to "circumstances in which they can experience and give expression to their faculties and face challenges

²⁶ Nussbaum, *Women and Human Development*, 90.

²⁷ In a very basic sense, 'opportunities,' 'capabilities' and 'conditions for functioning' are all concerned with making a certain 'doing' or 'being' *possible* for A, rather than with A's actually achieving it. But they signify different degrees of possibility, becoming more and more oriented towards A's actual achievement. My claim is that, in the context of upbringing, the capabilities metric is still insufficiently oriented towards actual achievement due to its agential focus.

involved in using these faculties.”²⁸ With some children this would be all that it takes for them to achieve functionings. However with others it would also require proactive encouragement, guidance and support. I take the conditions for functioning to comprise all these dimensions. What justice requires of parents, then, is that they provide their children with the conditions for achieving the above-listed functionings. In the following section I tackle the issue of the level of achieved functionings up to which parents are required to provide conditions for.

4. A threshold of achieved functionings: The purview of family justice

I now wish to defend a certain threshold of achieved functionings up to which parents are required to provide conditions for their children. The threshold is meant to mark the purview of family justice, that is, the reach of children’s claims of justice from their parents. To be explicit, I make a strong claim with regards to the threshold: not only that below the threshold the demands of family justice are yet to be met, but also that it indicates the point at which they are *fully* met.²⁹

Nussbaum’s theory offers surprisingly little help in attempting to determine a threshold. She claims that the threshold is the level enabling a person to live in a way “truly human, that is, worthy of a human being,”³⁰ and believes we could reach a cross-cultural consensus on what a “truly human” life requires.³¹ But what “truly human” actually means is far from clear and whether it enjoys a cross-cultural consensus is even less so. In some cultures chastity would be included under this heading; others would emphasize critical reflection; still others would single out religious observance, and so on. For this reason I wish to draw on a suggestion made by David Miller and argue that

²⁸ Macleod, “Primary Goods, Capabilities, and Children,” 187.

²⁹ Cf. Nussbaum, *Women and Human Development*, 12, 75, where she remains agnostic about what justice requires above her proposed threshold.

³⁰ *Ibid.*, 73.

³¹ *Ibid.*, 74.

the threshold is *the level of achieved functionings which allows the child to lead a decent life in terms of the parents' social and cultural context.*³²

According to this formula, the social and cultural context of the child's parents serves to determine both the specific content of each category of functionings and the standards of achievement that constitute decent life. Examples of the former would include different religions requiring involvement in specific practices for their followers to become affiliated; thus, a Christian context would probably involve baptism and, perhaps, going to church on Sundays, whereas a Jewish context would often require circumcising the male child and holding a *bar-mitzvah* ceremony at the age of thirteen. Adequate nourishment would take different forms under various dietary restrictions, such as halal, kosher or vegan. Adequate shelter would be very different for Bedouins and New Yorkers. In some societies the functioning of imagination and thought would be defined mainly in terms of mastering holy scriptures; in others, in terms of scientific training or artistic skills.

But even when the functionings are understood in roughly the same way, the standards constituting decent life may vary across social and cultural contexts. Taking just one example, even if family gatherings are central to the understanding of affiliation, in two different social contexts the extent of achieved affiliation that is required for decent life may vastly differ; in one context, gathering once a year to celebrate a specific holiday together may be the standard, while in the other meeting less often than every weekend would be considered as not having enough affiliation. So the social and cultural context in which the upbringing of the child is taking place has a

³² Cf. Miller, *Principles of Social Justice*, 27, 206-13. There are some important differences between Miller's suggestion and the way in which I state the threshold here. First, Miller does not specifically refer to children and families but to the wider context of (political) community. Second, like Sen's his focus is on capabilities rather than achieved functionings. Third, he suggests we understand what constitutes decent life in terms of the person's community while I argue that it is more specifically by way of the social and cultural context of the child's parents. My argument for this threshold is also different from his and builds on my earlier characterization of the parent-child context.

crucial role in determining the actual content in each category of functionings, as well as the threshold of achieved functionings that is necessary for decent life.³³

Objections may be raised with respect to the specific threshold level or to the idea of a threshold more generally. I defend the threshold against the former in this section, and against the latter in the section that follows. My refutation of the objections holding the threshold level to be either too high or too low will be primarily based on how the parent–child relationship was characterized in the previous chapter.

A. The objection from conscience

The first objection holds that the threshold may be too demanding of parents, depending on their values and beliefs. If we insist on the threshold of decent life prospects, circumstances might be such that meeting the threshold would conflict with the parents' cultural context and require them to act against their conscience. In other words, it might be the case that there is no available way for parents to meet the threshold while remaining faithful to their values and beliefs. An example often given in this context is the rejection of blood transfusions by Jehovah's Witnesses. In a case where a Jehovah's Witness child is in need of a blood transfusion for sustaining the functionings of *life* and *bodily health*, meeting this need stands in conflict with her parents' practice.³⁴ Here, requiring parents to provide the conditions for these

³³ Like Will Kymlicka's understanding of "societal cultures" I take the social and cultural context to provide "meaningful ways of life across the full range of human activities, including social, educational, religious, recreational, and economic life, encompassing both public and private spheres" (*Multicultural Citizenship: A Liberal Theory of Minority Rights* [Oxford: Clarendon Press, 1995], 76). Yet I prefer to use the phrase 'social and cultural' to emphasize the fact that society and culture are not coextensive. One may find very different cultural contexts (say, religious or ethnic) sharing the legal and political arrangements as well as the economic structure of a particular social context. Also, particular cultural contexts (or very similar ones) may be found across different social contexts. This is not to deny, however, that society and culture interactively affect and shape each other. On this point, see Chandran Kukathas, *The Liberal Archipelago: A Theory of Diversity and Freedom* (Oxford: Oxford University Press, 2003), 77-85.

³⁴ Jehovah's Witnesses argue that blood transfusions are not as necessary as is generally assumed since they may involve considerable risks and effective alternatives are available; see The Watchtower, "How Can Blood Save your Life?" (www.watchtower.org/e/hb/index.htm?article=article_00.htm). It is not my intention here to take issue with this argument but to address a possible case where blood transfusion is

functionings would thus go against their religion and show disrespect to their values and beliefs.

The problem with this objection is that it neglects the fundamental element of *upbringing* in the parent–child relationship. While it is legitimate for the upbringing to take shape according to the parents’ values, beliefs and practices, and thus to establish the element of identity between parents and child, this is only because the parents have taken the task of bringing up the child upon themselves in the first place. If they are not willing to go ahead with this task (in this case, because it implies acting against their conscience) they also lose their authority over the child. Another way of putting it is that parental rights over children are *not* extensions of the parents’ rights over themselves,³⁵ as the sense of interconnectedness and continuity between the identities of parent and child does *not* imply an identity between the chooser and the chosen-for. The child is a distinct human being with a moral status separate from the parents and this limits what parents are morally permitted to do to their children.

To clarify this point, consider the mass suicide at Masada which took place in AD 73 and marked the end of the failed Jewish revolt against Rome.³⁶ Three years after the fall of Jerusalem, the last pocket of resistance was holding out in the mountaintop fortress of Masada. At the end of a lengthy siege, when the Romans were just about to gain control, the rebels inhabiting the fortress committed suicide *en masse* to avoid surrender. The act, which included 960 men, women and children, was carried out by the men who first killed their wives and children and then killed one another, with the last man killing himself. Now, granting that the rebels wholeheartedly believed that surrendering to the Romans was morally condemnable, I still contend that they were

medically required. In such a case, Jehovah’s Witnesses would still be committed to reject the transfusion, notwithstanding the above argument.

³⁵ Cf. Charles Fried, *Right and Wrong*, (Cambridge, MA: Harvard University Press, 1978), 152; William A. Galston, *Liberal Pluralism: The Implications of Value Pluralism for Political Theory and Practice* (Cambridge: Cambridge University Press, 2002), Chapter 8.

³⁶ See Josephus, *The Jewish War*, trans. G. A. Williamson (Harmondsworth: Penguin, 1959), 357-67.

not morally permitted to take this decision on behalf of their children and thus force them to become martyrs.³⁷

The cases of the Jehovah's Witnesses and the Masada rebels are undeniably different in many ways.³⁸ Nevertheless in both cases the parents are led by their values and beliefs to prevent their children from leading a decent life, thus violating the separate moral status of the children. What is important here is that while it is no longer possible for the children to lead a decent life according to the terms of their parents' context, a decent life with different contextual terms *is* available.³⁹ In those cases it is morally wrong for parents to withhold the conditions for their children to lead a life that does not conform to their own terms of decency.⁴⁰ It is only as long as parents do provide decent life prospects in their own terms that these terms (are allowed to) matter.

³⁷ *Prince v. Massachusetts*, 321 US 158 (1944): "Parents may be free to become martyrs themselves. But it does not follow they are free, in identical circumstances, to make martyrs of their children." (However, see Nussbaum, *Women and Human Development*, 234-5, for a spot-on critique of the application of this principle to that particular case.)

Does the responsibility for their children also make it impermissible for the parents to become martyrs themselves? Answering in the affirmative might be too harsh but it is plausible to argue that parental responsibility does place an additional moral burden on such an action by, for example, requiring the parents to try and find alternative placement for the children.

³⁸ One difference that may have some moral significance is that the Jehovah's Witness parents *refrain* from an action required for sustaining the life of their child whereas the Masada rebels *took* an action to end their children's lives. Whether this has some moral significance (which might imply different levels of moral condemnation and legal sanctions) depends on the status of the intending/foreseeing distinction. Yet I do not think it may be of such significance to make the Jehovah's Witnesses case morally permissible.

³⁹ Some may dispute the validity of this claim with respect to the Masada case by arguing that, had the rebels not committed mass suicide, the women and children would have faced all sorts of atrocities and eventually murder. (Indeed, that was one of the arguments employed by Eleazar, the rebels' leader.) However, the text tells of two women and five children who escaped the mass suicide and when discovered by the Romans, so it is implied, were not harmed. In any case, the central idea guiding the rebels throughout was, in Eleazar's words, "to serve neither the Romans nor anyone else but only God... *even when it brought no danger with it*" (Josephus, *The Jewish War*, 360; emphasis added).

A relevantly similar case in the modern era was the Badung Puputan, the mass suicide of a thousand Balinese, including women and children, in response to the Dutch intervention in Bali in 1906. It is interesting to note that both cases are commonly glorified in the respective cultures as acts of resistance. That our principle of justice condemns them (insofar as involving children) demonstrates the critical force it may have despite the considerable leeway given in the name of cultural diversity.

⁴⁰ This does not mean they have to be the ones directly providing those conditions. Alternatively, they can let someone else provide them for the children.

We should distinguish the cases discussed above from unfavourable circumstances which *by themselves* make it impossible for parents to provide their child with decent life prospects. Those circumstances might be related to the child (as in cases where the child suffers from a physical or cognitive impairment); or they might be social (e.g. when facing racial discrimination), political (e.g. when the family finds itself living in the midst of a war zone), or natural (e.g. in cases of drought or an earthquake). Considering them does not imply that meeting the proposed threshold is not a demand of justice, only that there are times at which this demand cannot be met. By contrast, the point of the objection, which we rejected, was to present a case where it *can* be met but need not be. The issue of unfavourable circumstances is addressed in subsequent parts of the thesis.⁴¹ Here it is mentioned only to be distinguished from the objection from conscience and to make clear that it does not raise a problem for the proposed threshold itself.

B. The open future objection

Moving now to the second objection, it may be argued against the suggested threshold that by limiting it to the social and cultural terms of the parents it is set too low. The objection maintains that parents have a duty to provide their children with an open future and thus cannot limit the conditions they provide for their children to their own social and cultural context. This threshold is too low, so it is claimed, because it does not respect the child as a prospective autonomous adult, unnecessarily narrows the available life-plans from which to choose, and therefore lowers the child's chances to achieve self-fulfilment. Joel Feinberg has stated the case for the *open future objection* most prominently:

When sophisticated autonomy rights are attributed to children who are clearly not yet capable of exercising them, their names refer to rights that are to be *saved* for the child until he is an adult, but which can be violated 'in advance,' so to speak,

⁴¹ See the Appendix to this chapter and Section 4 of Chapter 5.

before the child is even in a position to exercise them. The violating conduct guarantees *now* that when the child is an autonomous adult, certain key options will already be closed to him. His right while he is still a child is to have these future options kept open until he is a fully informed, self-determining adult capable of deciding among them.⁴²

Notable cases of not conforming to this line of thought are the Old Order Amish who do not educate their children past the eighth grade,⁴³ or the ultra-Orthodox Jews in Israel who are exempted from teaching mathematics beyond basic arithmetic, biology and foreign languages in their schools. The objection raised against these cases is not that the parents do not provide their children with the required conditions for leading a decent life but that they unduly limit those conditions to their own cultural context. It is worthwhile to note that while these cases are taken from the sphere of education the objection is by no means limited to this realm. Thus, it is quite common for parents in Israel to try to obtain foreign passports for their children to make available opportunities beyond their own social context.⁴⁴ How can a threshold that allows parents to deliberately 'close' the future of their child and deprive her of some otherwise-available opportunities be justified?

In response we should first be clear on what the threshold does not demand. It is not intended to *restrict* parents to the terms of their own social and cultural context. What it does infer is that parents are not required, as a matter of justice, to provide their children with conditions for them to lead a decent life in a different social and cultural context. So the threshold does not condemn Israeli parents who seek foreign passports for their children but only indicates that doing so is to go beyond what justice requires. In the same way the threshold implies that when Israeli parents do not obtain foreign passports for their children the latter do not have a claim of justice against the

⁴² Joel Feinberg, "The Child's Right to an Open Future," in his *Freedom and Fulfillment: Philosophical Essays* (Princeton, NJ: Princeton University Press, 1992), 76-7.

⁴³ See *Wisconsin v. Yoder*, 406 US 205 (1972).

⁴⁴ This usually takes the form of applying for European citizenship based on the European descent of the child's parents, or by giving birth to the child while staying in the US.

former (though the children may still be deeply disappointed or even resent their parents for not doing so).

Second, the threshold still keeps the future of the child open in an important sense as it does not allow parents to prevent the child from leading a decent life in terms different from their own.⁴⁵ Old Order Amish parents are not required to provide children with education past the eighth grade and ultra-Orthodox Jewish parents are exempted from teaching their children biology. But if the children actively seek this education their parents cannot prevent them from obtaining it. Not requiring parents to provide their children with conditions for functionings that do not conform to their own contextual terms does not amount to giving them a right to prevent their children from trying to obtain those conditions themselves (although they may still make it very costly).⁴⁶

Third, in another no less important sense it is not possible to keep the future of the child 'open' because by doing so, valuable options are closed off. This point is made by Claudia Mills, specifically with respect to the child's religious affiliation. One plausible interpretation of what an open future means in Feinberg's argument is that parents should not intentionally isolate their children from other ways of life and should ensure they learn of the variety of religious and nonreligious lifestyles. This can take the form of visiting different religious services and reading about the various beliefs held by each religious group, thereby offering the child a range of available religions to choose from. However, Mills argues that this way of upbringing does not in fact leave the opportunities open for the child since it deprives her of the experience of belonging to a religion.

[F]or most people who are involved in most religions today, creeds themselves are not central to their religious experience. What is central is community. I have religiously observant Jewish friends for whom this is all that matters to their being

⁴⁵ This is a stronger claim than the one I made in response to the objection from conscience, as it is not dependent on the parents not being able to provide conditions for decent life prospects in terms of their own context.

⁴⁶ I discuss this further in my treatment of children's right to exit in Chapter 5, Section 5.

Jewish: being part of community, a culture, a tradition, a history... Even in my own religion, Christianity, most church members (myself included) have only a vague notion of the various points of theology to which we supposedly subscribe... What is important is to live in a 'church family,' to be part of a community of faith, having potluck dinners together, bringing casseroles to the sick, carolling to shut-ins. It takes a long time to become part of a spiritual community, maybe a whole lifetime. Maybe you only really understand what it is to be a part of a spiritual community when you die in its arms.⁴⁷

If Mills is right then the ideal of an open future for the child is an illusion, at least with respect to religion, since opening one door often entails closing another.

But lastly, even if Mills is wrong and an open future for the child is achievable I contend that the significance of the element of identity in the parent–child relationship implies that parents are not required as a matter of justice to provide an open future for their children. To recall, the element of identity refers to a strong sense of interconnectedness and continuity between the identities of parent and child, established during childhood through the reproduction of some of the parents' social, cultural and more idiosyncratic characteristics in their children. This element, I argued in the previous chapter, is a fundamental aspect of the parent–child relationship and underlies a distinctive value of the relationship. It now follows from this that parents should be allowed to perform the task of upbringing in a way that conforms to their social and cultural context and is conducive to establishing the element of identity in their relationship with their children. If we accept that principles of justice correspond to the specific nature of the relationships to which they apply, and if we further accept that a fundamental aspect of the parent–child relationship is the element of identity, then a principle of family justice needs to adequately accommodate this element. Thus, justice does not require Old Order Amish and ultra-Orthodox Jews to provide their children with conditions for leading a decent life in contexts other than their own. They can, of course, do so – as in the case of Israelis who provide conditions for their children to lead a decent life in a non-Israeli context. But this is left to their discretion. What

⁴⁷ Claudia Mills, "The Child's Right to an Open Future?" *Journal of Social Philosophy* 34 (2003): 499-509, at 503.

justice requires is that children are brought up so they are able to lead a decent life and this can be limited to the parents' contextual terms to assist in the establishment of the element of identity.

5. A cluster of threshold-generated concerns

At the beginning of this chapter I suggested that thinking about upbringing in terms of meeting children's needs points towards a sufficiency principle of justice for this context. Yet the idea of a threshold that is meant to exhaust the demands of justice gives rise to egalitarian concerns as it allows for a range of intuitively troubling inequalities. The suggested threshold may seem plausible as long as we consider the child's position in isolation from others, so says the concerned egalitarian, but it fails to address the potentially disadvantaged position of the child *compared to* (some) others. In this section I wish to consider several cases which may give rise to this concern. My aim is to show that to the extent that they are troubling they can be addressed, and to the extent that they are allowed they are not that troubling.

Consider first the case of the Bill Gates-like parent mentioned in the introduction to the chapter. I said there that it does not seem plausible to hold that it is an injustice if the children of the super-rich turn out to be only mildly rich and not as rich as their parents (or as their parents can make them). The threshold accords with our intuitive acceptance of this non-troubling inequality. However, the threshold also implies that *every* inequality above it, no matter its magnitude, is not unjust. So it seems to allow for a case in which a super-rich parent insisted on keeping his child only slightly above the threshold level of decent life prospects, still leaving him quite poor.⁴⁸ Unlike the

⁴⁸ This worry echoes Paula Casal's argument against Roger Crisp's anti-prioritarian Beverly Hills case. See, respectively, Paula Casal, "Why Sufficiency Is Not Enough," *Ethics* 117 (2007): 296-326, at 312; and Roger Crisp, "Equality, Priority, and Compassion," *Ethics* 113 (2003): 745-63, at 755.

inequality between a super-rich parent and his mildly rich child, an inequality between a super-rich parent and his mildly *poor* child does upset our intuitions.

An initial response to this case might be that although it is not strictly speaking an injustice – the child is still provided with decent life prospects – we find it troubling because of features other than justice that we expect to find in the parent–child relationship. If a super-rich parent allows only mildly poor life prospects for her child this might indicate a lack of altruistic feelings of the sort we also expect the parent–child relationship to display. The shortfall, therefore, might not be one of justice. This response may account, I believe, for our uneasiness with respect to some inequalities between parents and children, but I wish to argue that *gross* inequalities, such as in this case, are not, in fact, permitted by the suggested principle of family justice.

To see this we need to remind ourselves of the pluralistic nature of the family justice metric. Parents are required to provide conditions for achieving a *set* of functionings and it is with respect to *each* of the functionings that the standards constituting the level of decent life need to be met. In light of this we may go back to our case and ask what arriving at such a gross inequality would involve. It seems that the only way in which a parent can be situated way above the threshold while keeping his child only slightly above it, is through systematically isolating the child from his own life. The child will need to be provided with a substantially different level of nutrition, health care and education, and also shelter, social interaction and pleasurable experiences, from that of her parent. Now even if all that were possible – the story of Cinderella may give an idea how it might be – we can now see why it would be unjust. This is because such treatment, contrary to what we initially assumed, is most likely to deprive the child of secure emotional attachments, harm her sense of self-worth and her self-respect and result, in turn, in her *emotions* and *affiliation* functionings falling below the threshold of decent life. If this is right then the threshold does rule out such an inequality because it cannot be sustained while keeping *all* functionings above the decent life level. This also serves to emphasize an important point, namely that the achievements of the various functionings are, though non-substitutable, deeply interrelated. Providing the conditions

to achieve some functionings means, at times, providing conditions to achieve certain others. Providing a child with a decent life prospect is a task which is pluralistic but also holistic. Each functioning counts and this implies that their interrelations must count as well.

Consider next the inequalities between siblings. The threshold implies that, as long as parents meet the threshold with respect to each of the siblings, inequalities between them are not unjust. But aren't parents required to treat their children equally? Can justice allow them to benefit their children differently? Here again some inequalities seem more troubling than others. Take first the inequality between two siblings that might flow from the mere fact that sibling S1 has a closer relationship with parent P than sibling S2 has. As it happens, P and S1 very much enjoy each other's company and find themselves spending more time together but this, in turn, generates an inequality between S1 and S2. While S2's achieved functionings are above the threshold level, the closer relationship S1 has with P does provide conditions for S1 to achieve the functionings of *emotions* and *affiliation* at a higher level than that of S2. Yet this inequality is not concerning, but quite natural. What the parent should ensure in this case is that the closer relationship with S1 does not harm S2 emotionally or otherwise. The intuition that what matters here is that S2 is being provided with enough conditions (but not necessarily equal to S1) is in agreement with what the threshold implies.

However this seems too easy a case mainly, perhaps, because the inequality here is not caused deliberately but arises spontaneously. It is a natural and, to some extent, inevitable consequence of different people having different personalities and more affinity with some than with others. So what about inequalities that are deliberately generated by parents? Some inequalities are the result of parents relating and being committed to one of their children's projects more than to others. They are more invested in cultivating this child's talent for the violin or in that child building a military career or sponsoring another child's humanitarian initiative. Again, as long as they are meeting the threshold with respect to their other children such inequalities seem permissible. (Remember my claim above that the threshold requirement referring to *all*

relevant functionings does constrain the size of inequalities between family members.) It may have been better if such inequalities did not exist but they fall within the freedom of parents to determine the use of their *own* resources.⁴⁹

Perhaps the most troubling kind of potential inequalities between siblings are those based on gender. Can parental conduct which results in siblings having different life prospects based on their gender, be just? Here we need to distinguish between two contextual scenarios, possible in theory if not in practice.

In the first, the social and cultural context presents different conceptions of *decent* life for men and women through specifying different contents for various categories of functionings or different standards of achievement. The application of these different conceptions within the family results in inequalities between male and female siblings. Now, in my view, *if* the life prospects of both are considered decent, albeit different, then the parental conduct here is not unjust. Let me elaborate. Both genders' life prospects need to be considered decent by the men *and* women who share that context. It is an injustice if fathers provide life prospects for their girls that they consider (or claim to consider) decent but are experienced by the latter (and the women they become) as degrading, humiliating and shameful; or if fathers provide life prospects for their girls that they consider degrading, humiliating and shameful but are experienced by the latter (and the women they become) as decent.⁵⁰ What I do not require is that we, who do not share their context, will also consider those life prospects decent.⁵¹

Moreover, it might be unjust *not* to conform to this gendered background. Consider gender-blind parents who provide training to both their son and daughter

⁴⁹ See also the discussion of primary goods below for why we should not require parents to remain neutral with respect to the use their children make of their resources.

⁵⁰ Because of, say, 'false consciousness' or adaptive preferences.

⁵¹ Here I follow Michael Walzer, "Objectivity and Social Meaning," in Nussbaum and Sen, *The Quality of Life*. See also Joseph Raz, "Multiculturalism: A Liberal Perspective," in his *Ethics in the Public Domain: Essays in the Morality of Law and Politics* (Oxford: Clarendon Press, 1994), 186; and cf. Susan Moller Okin, "Inequalities Between the Sexes in Different Cultural Contexts," in Martha C. Nussbaum and Jonathan Glover (eds.), *Women, Culture and Development: A Study of Human Capabilities* (Oxford: Oxford University Press, 1995). I leave open the question whether real-world cases have ever conformed to this scenario or might do in the future. Okin's answer seems to be negative whereas my own answer, based mainly on external yet quite close observation of various forms of Orthodox Judaism, tends to be positive.

according to the standards of 'decent life for men,' which substantially differ from those applying to the parallel 'decent life for women' conception. But the daughter, now an adult, can neither translate her skills into a decent living (as the relevant jobs are open only to men), nor find a husband to support her since girls who receive boys' education are considered indecent. If parents' equal upbringing of their son and daughter results in the daughter's life prospects falling below the threshold of decent life (because of their falling below the threshold of 'decent life for women') then I am inclined to view this case as an injustice, no matter my own contextual (and personal) agreement with gender equality.

In the second contextual scenario, we find that the contents and standards that constitute decent life are roughly the same for men and women but they apply unequally to male and female children, leaving the children of one sex – most commonly the female – with a lower level of achieved functionings. It is clear by now, I hope, that the threshold easily rules out the kind of anti-female bias in health care and nutrition that has led, according to Amartya Sen, to tens of millions of women 'missing' from the world's population.⁵² It also rules out humiliating attitudes towards female children, anti-female bias in education and training, or any other unequal treatment that results in women not being able to lead a decent life in their social and cultural context.⁵³ True, the threshold does allow for some inequalities between siblings to remain even if they are somehow based on or influenced by gender. Thus, parents may have a closer relationship with a child of the same (or opposite!) sex, or relate more to certain projects of their children that are associated with their gender. But in line with the earlier discussion, such inequalities are permitted as long as all relevant functionings of all the children in the family meet the threshold level. I have argued that this requirement constrains the size of inequalities within the family and, in light of the issue

⁵² Amartya Sen, "Missing Women," *British Medical Journal* 304 (1992): 587-8. See also Stephan Klasen and Claudia Wink, "'Missing Women': Revisiting the Debate," *Feminist Economics* 9 (2003): 263-99.

⁵³ In a contemporary liberal context this implies, among other things, that girls need be provided with the education and training which give access to jobs with (what men would also consider for themselves) a decent wage.

of gender, we may now add that it also constrains their frequency. This is because inequalities, even if relatively minor, which *systematically* favour one or some children – the male, the first-born, the last-born, the one that resembles the parent most, and so forth – over others, are most likely to result in some of the functionings of the less-favoured children falling below the threshold (by way of the same dynamic explained above).

So far I have only considered inequalities from the perspective of the worse-off party. But the better-off members of the family may also raise an objection against the threshold which is worth considering. According to our principle, providing conditions to achieve functionings *up to* the level of decent life prospects is a demand of justice, but no such demand holds above that level. But what if the child whose level of functionings falls below the threshold, is a very poor functionings-achiever? His functionings level can approach the threshold, but an enormous infusion of resources is required in order to provide him with the conditions for very limited achievements. This child thus becomes a “basin of attraction” for family resources, even if he cannot be brought to the threshold level and no matter how high the level of functionings his siblings, already meeting the threshold, could alternatively achieve. Is such a situation unacceptable, as Richard Arneson suggests?⁵⁴

I do not think so. Arneson is right to point out that “preventing lethal diseases that strike only above-threshold individuals could be morally more cost-effective than achieving tiny pleasures for below-threshold individuals.”⁵⁵ But it is wrong to think that this serves as a counterexample to our principle (or to any plausible principle of sufficiency for that matter). Attending to this matter should surely have priority, something our principle actually confirms through its requirement to provide conditions for decent life prospects. A lethal disease, by definition, will cause the *currently*-above-threshold children to fall not only below that threshold but also below their

⁵⁴ Arneson, “Perfectionism and Politics,” 55-6; “Why Justice Requires Transfers to Offset Income and Wealth Inequalities,” *Social Philosophy and Policy* 19 (2002): 172-200, at 195. Arneson’s objection to the sufficiency view in general is here adapted to the intra-family context.

⁵⁵ Arneson, “Why Justice Requires Transfers,” 195.

permanently-below-threshold sibling as they will have no life, literally speaking.⁵⁶ A relevant counterexample will be one in which the better-off children *remain* above the threshold of decent life prospects, and are dramatically benefited *further* at the cost of the non-provision of a small benefit to their sibling whose functionings cannot reach that threshold level. But it is no longer clear that such an example will be compelling. Consider two siblings, one of whom enjoys a normal level of functionings whereas the other suffers from severe autism. Their parents provide decent life prospects for their normal child but focus most of their resources (time, attention, money, etc.) on their autistic child in an attempt to establish minimal communication. Say that the investment of the same amount of resources could either result in the normal child going to Harvard and leading an incredibly successful life, or in their autistic child starting to make eye contact with people around him. Is it unjust to give such priority to their autistic child? Does the normal child have a claim of justice against the parents in this case? It seems that quite the opposite holds. In light of the huge gap which already obtains between the siblings, I cannot see anything problematic in the parents devoting most of their available resources to improve (even slightly) their autistic child's situation.

I wish to end my defence of the threshold by addressing one final type of inequality, namely that between children of different families. Even if the principle reflects a satisfying state of affairs *within families*, it still allows for enormous inequalities between children *across society*. Paula Casal makes the claim that “[e]ven when everyone has enough, it still seems deeply unfair that merely in virtue of being born into a wealthy family some should have at their disposal all sorts of advantages, contacts, and opportunities, while others inherit little more than a name.”⁵⁷ We may quibble that if having enough is understood in our context as having decent life

⁵⁶ But perhaps the example should be interpreted as referring to a lethal disease striking the above-threshold children only when they are old so it cannot be said that their *life* functioning of not dying prematurely falls below the threshold. Still their *bodily health* functioning surely falls below the threshold of having good health and, thus, preventing that disease remains a matter of justice.

⁵⁷ Casal, “Why Sufficiency Is Not Enough,” 311.

prospects, then children are to be provided with rather more than merely a name. Yet the substantive point remains that having decent life prospects is compatible with having much lower prospects in comparison to others or, in other words, with not having (fair) equality of opportunity. This may suggest that the threshold level should be defined in comparative terms, say, as some fraction of the average level in society.

In response we should first note that the threshold of decent life prospects is indirectly comparative, as the level of decent life is to be understood in terms of the relevant social and cultural context. If the general standards of living in society are steadily rising then the standards constituting decent life are likely to rise as well, even if more slowly and to a lesser extent. On the other hand, a directly comparative threshold seems to face a severe problem. If the prevalent standards of living in society sharply fall – due to a plague, for example – then the alternative threshold implies that parents who are still able to provide decent life prospects for their children (say, they can gain access to vaccination) might not be required to do so.⁵⁸ But this seems implausible.

Perhaps we can combine the two suggestions and argue that the threshold level should be some fraction of the average level in society provided it does not fall below the decent life level. Yet I cannot see how such a comparative level can be determined non-arbitrarily. The average level has statistical significance, not moral. And even if this could be done, it would not serve as a solution. No matter how the threshold is defined, it allows inequalities above it. To address the issue of the *relative* disadvantage of children, we need to constrain inequalities across society not only from below but also from above. This might create, in turn, inequalities within families between parents and children of the sort we already concluded to be unacceptable. Super-rich parents will now be *required* to systematically isolate their children from their own environment to avoid comparatively disadvantaging other children. This is not meant as a defence of the super-rich but to indicate where the root of the problem lies. *If* society allows for large inequalities between its adult members it also allows, as a consequence, for large inequalities between their children. But the relations between members of society are

⁵⁸ See Miller, *Principles of Social Justice*, 319n.

the subject matter of social justice, not family justice. Equality of opportunity is not a demand of family justice, then, yet family justice is not the end of the story. Social justice and family justice have a complex interplay with respect to children, to be explored in the next chapter.

6. Rejecting metric alternatives

So far I have put forward an account for a specific metric of family justice – conditions for achieved functionings – and defended a threshold up to which parents are required as a matter of justice to provide this metric for their children – the level allowing the child to lead a decent life in terms of the parents’ social and cultural context. I have yet to show, however, that the adopted metric is the most appropriate in the parent–child context. For this purpose I turn in this section to argue against three prominent alternatives to our metric – welfare, primary goods, and Dworkin’s metric of resources. When originally suggested by Sen, the functionings–capabilities metric was meant to designate a middle ground between welfare and resources.⁵⁹ In what follows I contend that in the parent–child context we should not slide back in either direction but hold to this middle ground.

A. Welfare

The debate on the welfarist metric has shifted from attained welfare to opportunity for welfare in order to meet forceful objections against the former made primarily by John Rawls and Ronald Dworkin.⁶⁰ I do not intend to follow this debate here in trying to

⁵⁹ This has led G. A. Cohen to coin the term “midfare” for this metric: “Midfare is constituted of states of the person produced by goods, states in virtue of which utility levels take the values they do. It is ‘posterior’ to ‘having goods’ and ‘prior’ to ‘having utility’” (“Equality of What?” 18).

⁶⁰ For a summary of Rawls’s points of criticism, see *ibid.*, 10-16. Dworkin’s critique appears in his *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, MA: Harvard University Press, 2000),

fathom the exact formulation that best captures a welfarist metric, be it attained welfare, opportunity for welfare or – drawing on the discussion in Section 3 above – something like conditions for welfare. I will instead examine the possibility that family justice should be concerned primarily with a welfarist metric rather than with functionings. As far as I can glean, no one has yet attempted a defence of the welfarist metric as being most suitable for the context of the parent–child relationship.⁶¹ It is worthwhile exploring why taking this route does not seem plausible.

There are differing interpretations of what is meant by the term ‘welfare’. Here I wish to limit my discussion to two main alternatives: pleasure, and preference-satisfaction. Pleasure, so I claim, does matter but it neither exhausts the metric of family justice, nor encompasses its most important dimensions. The fact that pleasure is included in the aforementioned list of functionings proves its importance. The category of *sense, imagination and thought* includes the functioning of having pleasurable experiences and avoiding non-necessary pain. The category of *play* goes further and points out more specific experiences of pleasure (laughing, playing, enjoying recreational activities). But the richness of the list of functionings also implies that many other valuable states of doing and being are not reducible to mere pleasure and may even be at odds with it. Children should be well nourished by their parents even if they could gain more pleasure by substantially limiting their diet to sweets. They should go to school even if spending all week at the beach is more pleasurable. Consider children that go through some painful operation in order to allow them more functionings – an orthopaedic procedure to correct a club foot, or an aesthetic orthodontic treatment that would improve their self-confidence. In all those cases it seems implausible to hold that the pleasure-guided interpretation captures what justice requires of the parent or, to put it differently, that opting for the alternative is a case of injustice. To repeat, having

Chapter 1. For the metric of opportunity for welfare, see most notably Arneson, “Equality and Equal Opportunity for Welfare”; but also Arneson, “Equality of Opportunity for Welfare Defended and Recanted,” *Journal of Political Philosophy* 7 (1999): 488-97, for his eventual renouncement thereof.

⁶¹ Arneson explicitly limits his discussion to adults through qualifiers such as “two persons entering their majority” or “at the onset of adulthood” (“Equality and Equal Opportunity for Welfare,” 233 and 239, respectively).

pleasurable experiences is valuable and pain ought to be avoided when unnecessary. Yet the fact that some parental conduct inflicts some pain on the child or frustrates the child's attainment of pleasure does not in itself indicate its being unjust.

What about understanding welfare as preference-satisfaction?⁶² An initial reply may be that requiring parents to satisfy their children's preferences (or to provide them with conditions or opportunities for satisfying their preferences) is too demanding. While one child may have a limited and stable set of preferences that could be met in large part by, say, buying her the canonical texts of Western political thought, another may have a capricious and changeable set that could barely be met by providing her with a surfing board and then piano lessons and then karate training and so on. It is simply unfair, the reply goes, to demand of parents that they meet such a never-ending set of preferences. In my opinion, this response is wrong. First, the claim that this metric might be too demanding could be raised against the functionings metric as well. But the fact that some parents face great difficulty in meeting the demands of justice does not seem to serve as an argument for no longer considering them as demands of justice. Second, opting for a welfarist metric does not mean that it should be incorporated into a maximizing principle. Alternatively, we could maintain that preference-satisfaction is what ultimately matters for family justice, yet incorporate it into a sufficiency principle so that it matters only up to a certain threshold.

In fact what seems most objectionable about the preference-satisfaction metric is in a way the opposite problem, namely that it is not demanding enough. Let me explain. An important feature of preferences is their being responsive to circumstances.⁶³ This implies that if preference-satisfaction was adopted, parents could discharge their obligations to their children simply by shaping their preferences in light of the conditions they provide. This fact about preferences makes them inadequate to serve as a metric of family justice. To see this more clearly, imagine two identical twins, T1 and

⁶² This is the route pursued by Arneson.

⁶³ On this point see, for example, Sen, "Well-Being, Agency and Freedom," 190-2; *Inequality Reexamined*, 54-5. Admittedly, this also holds true for the standards constituting the functioning level of decent life, but to a much lesser degree (see the penultimate paragraph of the previous section).

T2, born and raised in the same house. At every point in time they enjoy exactly the same level of preference-satisfaction (or are provided with conditions or opportunities for the same level of preference-satisfaction). The 'only' difference is this: from day one, T1 is raised according to the standards of her parents' social and cultural context (say, a contemporary liberal context) while T2 is confined to and brought up in the basement, and apart from interacting with her parents she is kept in total isolation. Some very unpleasant pictures may spring to mind so let me be clear. The parents devotedly take care of T2's nourishment and health and do not violate her bodily integrity in any way. They make sure that she properly develops – physically, emotionally and cognitively – and, as I stated, that her preferences are being satisfied (or are given the opportunities or conditions to be satisfied) to a level equivalent to that of T1. Unsurprisingly, T2 does not have a very complex set of preferences. In particular, she does not have any preference for leaving the basement for she was told from the earliest age that the world beyond the basement is a very dangerous one. Now, is there any way to conceive of the parents' treatment of the basement twin as meeting the demands of justice in the same way as their treatment of her sister does? I contend that the answer is unequivocally 'no'. If I am right then this scenario demonstrates that preference-satisfaction is not a plausible alternative to functionings as a metric of family justice.

But perhaps this is a too-hasty conclusion, which ignores a way round this impasse. It might be argued that in this scenario, what is really at stake is the illegitimate way in which the preferences of the basement twin were shaped by her parents. Thus, the scenario would only illuminate how wrong some ways of shaping preferences are; not that we should reject preference-satisfaction as a metric. Yet what is it that leads us to view this conduct as unjust? After all, children's preferences are shaped in response to their parents' conduct all the time. Having the preferences we do is in a large part due to the circumstances we are exposed to and the experiences we go through. The absence of bear-hunting on my preferred list of leisure activities probably has to do with the fact that I have lived all my life in a bear-free environment where hunting in general is rare. (I also regard hunting as leisure activity to be wrong, but I might have regarded it

differently had it been part of my upbringing.) So in this respect there is no difference between the way the basement twin's preferences have been shaped, and any other way of shaping preferences. It seems to me that what brings us to view the basement upbringing as wrongful is the fact that it prevents the twin from leading a life that can be considered decent in her social and cultural context. Had her context been such that everyone were living in basements and rarely went out, the parents' conduct would not have been regarded as wrongful.⁶⁴ In other words, what is morally problematic here is the level of her conditions for functioning, not her preference-satisfaction. If this is indeed the case, then we are led once again to the conclusion that the metric of functionings is superior to that of preference-satisfaction in the parent-child context. In addition, this demonstrates why the standards of upbringing cannot be determined merely by the *parents'* preferences or by some idiosyncratic understanding of what constitutes decent life, but must be constrained by social and cultural contextual terms.

B. Primary goods

From the other direction are resourcist metric alternatives, one of which is the Rawlsian metric of primary goods. Before examining this metric it is important to observe that Rawls's own understanding of it has gone through major transformations since its first inception in *A Theory of Justice*. As he has reformulated his theory to be narrowly political (rather than comprehensive) Rawls has made clear that the metric of primary goods is preferable in the specific context of a political conception of justice applying to

⁶⁴ For example, imagine a prehistoric hunter-gatherer society whose members live in caves sheltering from some dangerous predators. This can also serve to illustrate the claims made in the previous section with respect to gender-based inequalities between siblings. Consider the same basement scenario only this time not with twin sisters but with T2, the basement twin, as a girl and T1 as a boy. In our contemporary liberal context this is surely no less wrongful than the upbringing in the original scenario (and perhaps even more so). But in a different context, such as a hunter-gatherer society in which a 'basement upbringing' corresponds with the 'decent life for women' conception, it might not be (or much less so).

the basic structure of society.⁶⁵ Thus he writes that “given the political conception of citizens, primary goods specify what their needs are – part of what their good is as citizens – when questions of justice arise.”⁶⁶ The idea of needs here is “relative to a political conception of the person, and to their role and status” and so “the requirements or needs of citizens as free and equal persons are different from the needs of patients or students, say.”⁶⁷ So it should not come as a surprise that primary goods are also different from the needs of children, specifically in the context of family upbringing. Indeed, as it stands, Rawls’s list of primary goods⁶⁸ – including basic rights and liberties, occupational opportunities, powers and prerogatives of office, income and wealth, and the social bases of self-respect – seems largely irrelevant to children.⁶⁹

However, Rawls’s own interpretation of his theory as political liberalism, does not preclude the possibility of utilizing the earlier account of the primary goods metric and examining its relevance to justice in the family.⁷⁰ In *A Theory of Justice* primary goods are defined as “things which it is supposed a rational man wants whatever else he wants,” since by having more of these things “men can generally be assured of greater success in carrying out their intentions and in advancing their ends, whatever these ends may be.”⁷¹ Following this we could try to construct a child-focused list by asking what are the primary goods “that adults would choose to have had provided to them as children.”⁷² Both Gutmann and Blustein suggest that such a list would most importantly

⁶⁵ John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), 178-90; *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001), 57-61. On the context-specific relevance of the primary goods metric, see also Norman Daniels, “Equality of What: Welfare, Resources, or Capabilities?” *Philosophy and Phenomenological Research* 50 (1990): 273-96, at 274, 293-5.

⁶⁶ Rawls, *Political Liberalism*, 188.

⁶⁷ *Ibid.*, 189n.

⁶⁸ See Rawls, *Justice as Fairness*, 58-9.

⁶⁹ Macleod, “Primary Goods, Capabilities, and Children,” 180.

⁷⁰ See Amy Gutmann, “Children, Paternalism, and Education: A Liberal Argument,” *Philosophy and Public Affairs* 9 (1980): 338-58; Blustein, *Parents and Children*, 120-36.

⁷¹ John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1999), 79; see also at 54-5. In his discussion of paternalism in *Theory*, Rawls explicitly states that the theory of primary goods should guide us with respect to children; see *ibid.*, 218-20.

⁷² Gutmann, “Children, Paternalism, and Education,” 340. Notice however that for Gutmann the answer to this question should guide paternalistic state intervention, not parental conduct.

include adequate nutrition, health care, housing, familial affection and education.⁷³ No doubt this overlaps to a large extent with my suggestion of focusing on the conditions for achieving the functionings of *bodily health, emotions and sense, imagination and thought*. But even if we can extend the list of goods to correspond to the other functionings, I contend that we have no reason to focus primarily on goods rather than on functionings.⁷⁴ To see this we need to go back to Rawls's main motivations for choosing this metric.

Although, as has already been stated, the idea of primary goods has been reinterpreted throughout the years, two main motivations for adopting this metric remain roughly unchanged; namely, to satisfy requirements of publicity and of neutrality between conflicting conceptions of the good. These motivations are encapsulated by Rawls's following statement:

The thought behind the introduction of primary goods is to find a *practicable public basis of interpersonal comparisons* based on objective features of citizens' social circumstances open to view, all this *given the background of reasonable pluralism*.⁷⁵

The idea behind the requirement of publicity is a much complex one related to issues of legitimacy and stability.⁷⁶ But the main claim relevant to our discussion is quite straightforward, that the primary goods metric (in contrast to functionings–capabilities) provides us with a publicly observable and verifiable informational basis for evaluating the validity of claims of justice and the extent to which different institutions satisfy

⁷³ Ibid.; Blustein, *Parents and Children*, 126-30. Such a list goes beyond Rawls's original suggestion by referring also to the natural primary goods of health and intelligence (through health care and education) alongside the social primary goods. In Nussbaum's terms, we should aim at providing the social bases of these natural goods (*Women and Human Development*, 89).

⁷⁴ To be fair, both Gutmann and Blustein had opted for the primary goods metric before the functionings–capabilities metric was fully developed. (Sen first suggested it in his 1979 Tanner Lecture, published the following year.)

⁷⁵ Rawls, *Political Liberalism*, 181; emphasis added.

⁷⁶ On the publicity requirement, see Rawls, *Political Liberalism*, 66-71. For arguments for and against it being a requirement of justice, see, respectively, Andrew Williams, "Incentives, Inequality, and Publicity," *Philosophy and Public Affairs* 27 (1998): 225-47; G. A. Cohen, *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), 323-30, 344-72.

them.⁷⁷ To use Pogge's example, figuring out everyone's metabolic rates to determine their capability to be well nourished is not workable or, at least, much less workable than observing how much money they have to buy food. But this argument in favour of primary goods loses much of its strength when we move from the macro-level of social (or even global) justice to the micro-level of family justice. Here it is much easier for the functionings–capabilities metric to satisfy the publicity requirement, and insisting on the primary goods metric seems unnecessary, if not unjust. As long as we can focus on what recipients *really* need, we should not settle on approximations to their needs. If a child suffers from a metabolic disorder we do not usually think parents are doing enough by keeping on providing her with the same portion of food; they should take her to see a dietician or a doctor. Focusing on resources, rather than on functionings, amounts to neglect in this case. Similarly if one child needs more help with his homework than his sister, it is not very difficult to explain to her why he gets more attention in this respect (although it may still be difficult to get her approval). So the publicity requirement does not give us a reason for moving, in the family context, from functionings to resources. In fact, quite the opposite holds true. Since in this context it is relatively easy to satisfy the publicity requirement in terms of actual functionings it is wrong not to address them directly.

Rawls's second motivation for adopting the primary good metric was that it does not rely on any controversial conception of the good. Since primary goods are defined (in Rawls's earlier texts) as all-purpose means, we can assume people want them while remaining neutral between conflicting conceptions of the good.⁷⁸ In order to examine the metric of functionings in light of this requirement we need to distinguish between supra- and intra-family levels. At the supra-family level the neutrality motivation seems well grounded as different families operate in very different cultural and social contexts

⁷⁷ See Thomas W. Pogge, "Can the Capability Approach Be Justified?" *Philosophical Topics* 30 (2002): 167-228; and also John Rawls, *The Law of Peoples* (Cambridge, MA: Harvard University Press, 1999), 13n.

⁷⁸ Using the terminology of *Political Liberalism*, we suppose that a list of primary goods, which follows from a *political* conception of the person, can enjoy an overlapping consensus between reasonable comprehensive doctrines. For discussion of the way in which political liberalism is meant to satisfy neutrality and the ways in which it is not, see Rawls, *Political Liberalism*, 190-5.

according to various and often conflicting conceptions of the good. This was precisely the reason for insisting in Section 2 that for inclusion on the list, any category of functionings would have to meet the condition of accommodating a wide cultural and social diversity. We can regard the list therefore as one of ‘all-purpose’ functionings which every human being needs to achieve in order to lead a decent life. If a certain category is found to be drawing on a particular cultural or social context or, more specifically, on a controversial conception of the good, then it cannot remain on the list.

However, this stipulation does not pertain to the intra-family level. There, as I have stated, we should rely on the social and cultural context of the parents to determine both the specific content in each category of functionings and the standards of achievement which constitute decent life. I have already argued that in view of the nature of the parent–child relationship this should be the case. Demanding that parents refrain from ‘comprehensive’ considerations in the process of raising their children undermines a distinctive value of this relationship. Another way in which the neutrality requirement is not appropriate for the intra-family context has to do with the fact that, apart from being parents and having interests as such – captured to some extent by the argument just mentioned – people also have self-regarding interests which may conflict with the neutrality requirement. Consider for example what it would mean to require parents to remain neutral with respect to their children’s nutrition. Let’s say the child is old enough to buy and cook her own food and so her parents are required only to provide her with the resources (money) for being well nourished. The child has grown to love pork chops but the parents are observant Muslims/Orthodox Jews/vegetarians. Requiring the parents to stay neutral with respect to the child’s conversion of resources into functionings seems implausible here. In the case of the Jewish parents at least, it would mean that they could no longer use their own kitchen.⁷⁹ Since parents, unlike institutions, have interests of their own, we need to take them into consideration when

⁷⁹ This is because *kosher* applies to types of food as well as to kitchen utensils. Whether food is kosher or not depends, among other things, on the kitchen utensils used for its preparation, and whether the kitchen utensils are kosher depends, among other things, on the types of food they were previously used for.

we move from the supra-family to the intra-family level. So while the categories of functionings as they appear on the list meet the neutrality requirement, at the level of its implementation within families a departure from neutrality is not something to apologize for. As with the publicity motivation, the motivation provided by neutrality for adopting the primary goods metric in the political context helps to highlight its inadequacy in the context of the parent–child relationship.

C. Dworkinian resources

There remains another resourcist alternative advanced by Ronald Dworkin.⁸⁰ The main difference from Rawls’s metric of primary goods is that Dworkin includes under his metric both impersonal and personal resources.⁸¹ “[A] person’s resources,” he writes, “include personal resources such as health and physical capacity as well as impersonal or transferable resources such as money.”⁸² By including personal resources in his distributive metric Dworkin comes close to Sen, since justice is now concerned not only with people’s possessions of (impersonal) resources but also with what they can do with them as a function of their (personal resources of) health, talent and so on. This has led Dworkin to suggest the possibility that his equality of resources and Sen’s equality of capabilities are not real alternatives to each other but “only the same ideal set out in a different vocabulary.”⁸³ Yet to the extent that they are alternatives,⁸⁴ I now wish to

⁸⁰ Dworkin, *Sovereign Virtue*, especially Chapter 2.

⁸¹ There are many other important differences between their theories; see *ibid.*, 113-18, 330-1, for Dworkin’s discussion of them. Here I focus only on the difference relevant to my concerns, namely the way in which they define their resourcist metrics.

⁸² *Ibid.*, 300.

⁸³ *Ibid.*, 303. Cf. Sen, “Justice: Means versus Freedoms,” 115n: “To the extent that [Dworkin’s] insurance mechanisms even out differences in different people’s ability to convert resources into capabilities, the equality of insurance-adjusted values of resources would be an indirect way of approaching the equality of capabilities.”

⁸⁴ For some considerations of why equality of capability and equality of resources may eventually be incongruent with each other, see Sen, “Rights and Capabilities”; Andrew Williams, “Dworkin on Capability,” *Ethics* 113 (2002): 23-39; and Sen, *The Idea of Justice*, 264-9.

briefly point out why I think that in the parent–child context the functionings–capabilities metric is superior to that of Dworkin.

First, lying at the heart of Dworkin’s view is the crucial distinction between choice and circumstance.⁸⁵ Dworkin’s aim is to equalize (or mitigate) people’s circumstances and so to equally allow them to make choices according to their own life plans. This parallels Sen’s emphasis on freedoms or real opportunities for functionings. However, as we observed in Section 3, when we focus on children what seems most important is their achieved functionings. This has led us to formulate the family justice principle in terms of conditions for functionings. In contrast, Dworkin’s rather strict resourcist terminology (which serves his purposes very well) does not allow us to make the necessary shift of emphasis from means to outcomes which is crucial with respect to children.

Closely related to this point is the significance Dworkin places on neutrality with regard to conflicting conceptions of the good.⁸⁶ Dworkin’s theory, like that of Rawls, is intended to apply to the level of the state. He argues that for the state to treat its citizens with equal concern and respect it needs to remain neutral and this in turn is made possible only by a metric of resources. But we have already seen that the neutrality requirement, while relevant at the state level, becomes very problematic at the intra-family level and thus undermines the applicability of the Dworkinian metric to the latter.

Third, Dworkin’s metric tends towards monism. Despite the distinction between impersonal and personal categories of resources and the fact that both contain different kinds of resources, Dworkin often treats them as commensurable and to some extent substitutable with each other. This is made most explicit in Dworkin’s argument that equality of resources – his conception of distributional equality – “presupposes an economic market of some form, mainly as an analytical device but also, to a certain

⁸⁵ See, for example, Dworkin, *Sovereign Virtue*, 322-5.

⁸⁶ See Ronald Dworkin, “Liberalism,” in his *A Matter of Principle* (Cambridge, MA: Harvard University Press, 1985).

extent, as an actual political institution.”⁸⁷ Dworkin’s point is that a market mechanism is needed for setting prices for the vast variety of goods and services to be distributed, and at the heart of his argument is the construction of an imaginary auction on a desert island, where *each* distinct item on the island is labelled with its price reckoned in clamshells.⁸⁸ It is true that only impersonal resources are concerned here, but the hypothetical insurance auction for illness and physical handicaps presented later in the text aims, in Dworkin’s words, at “increasing the *impersonal* resources of those whose *personal* resources are in different ways impaired.”⁸⁹ Thus, Dworkin’s metric is far more monistic than functionings but also less pluralistic than Rawls’s primary goods. Again this is particularly significant in the case of children as it is highly unlikely that what their parents owe them could all be discharged using the same type of resources. Parents cannot substitute love, joy, a sense of belonging, and so on, with giving more money to their children. The pluralistic nature of the functionings metric highlights the fact that parents have obligations of different kinds towards their children which cannot be converted into one currency.⁹⁰

Lastly, and following from this point, is the issue of compensation. As we saw, for Dworkin a deficiency of personal resources may generate a valid claim for compensation in the form of additional impersonal resources. This follows on from his suggestion to think of the responsibilities of the state in terms of a hypothetical insurance scheme against bad brute luck. But does this picture correspond to the way we think of families? If it were the case that through no fault of his parents a child could not reach the threshold of some achieved functioning, would they still be required to compensate him by enhancing his other functionings? It seems hard to say because, as we saw earlier, the achievements of different functionings are deeply interrelated. Thus, if a child happens to score low on *bodily health* (because he suffers from some physical handicap)

⁸⁷ Dworkin, *Sovereign Virtue*, 66.

⁸⁸ *Ibid.*, 66-71.

⁸⁹ *Ibid.*, 303; emphasis added.

⁹⁰ For a more general argument against monist accounts of advantage and disadvantage, see Wolff and de-Shalit, *Disadvantage*, Chapter 1.

it might lead to a lower level of *affiliation* (being stigmatized and thus having fewer friends). To prevent this, a parent could try to provide more conditions for *emotions* and *play* to mitigate the potential negative effect of *bodily health* on *affiliation*. But here the ‘compensation’ is meant to prevent the corrosive effect of some ‘malfunctioning’ on related functionings. I am inclined to think that if the child happened to reach the threshold in all categories of functionings but one, and there was nothing to be done to raise the level of that single functioning, parents would not be required to compensate for that shortfall.⁹¹

These reservations about the Dworkinian resources metric conclude my discussion of the metric alternatives to functionings. Although none have been found to be superior to the functionings metric, I wish to emphasize that the discussion and the conclusions I draw from it are strictly limited to the parent–child context. I have not tried to claim nor do I wish to imply that the considerations about opting for this metric apply in other contexts.

7. Conclusion

I have argued in this chapter that family justice is concerned with children’s achievement of certain functionings and consequently requires parents to provide the conditions necessary for their children to achieve those functionings. I also argued that the purview of justice reaches only a certain threshold level of achieved functionings, namely that allowing children to lead a decent life in terms of the parents’ social and cultural context. This requirement corresponds to the nature of the parent–child relationship as an intimate form of upbringing which features the element of identity.

⁹¹ Consider a Stephen Hawking-like child who scores very high in all his functionings but one; his bodily health falls dramatically below the threshold and cannot be raised no matter what. Would you still say his parents owe him compensation?

While this account draws heavily on the capability approach, specifically on its development by Martha Nussbaum, it differs from it in several crucial aspects. The first concerns the starting point of each account. Nussbaum starts with human beings as such, identifies a list of valuable human functionings, and proceeds to evaluate the justness of social institutions in view of their contribution to human beings' capability to achieve those functionings. In contrast I start with a specific human relationship – that of the parent–child – and ask what the focus of justice is in this context. I find the functionings metric (although not all the functionings listed by Nussbaum) to be the most relevant, yet I do not claim that it can be generalized to all distributive contexts. Second, while both Nussbaum's and my accounts specify a threshold level whether of achieved functionings or capabilities, it is a very different threshold; for Nussbaum it is independent and cross-cultural whereas mine is culture-dependent.⁹² Third, the threshold has a different role in both accounts. Nussbaum remains agnostic with respect to what justice requires above the threshold and so her account is only of a "partial theory of justice." In my account the threshold aims to exhaust what justice requires of parents and thus to offer a complete theory of justice in this specific context.

To conclude this chapter I wish to summarize some of the implications of my account. First, the list of functionings demonstrates that the demands justice makes on parents are irreducibly plural in nature. Letting one or more of the functionings drop below the threshold is unjust no matter how high the other functionings score above it. More specifically, in this account money loses much of its importance. To be sure, in order to provide the conditions for some of the functionings money is required, but it is not money as such that parents owe their children. Where the required money should come from is here left open. (It might be the case that society should provide parents with at least part of the resources required for them to provide their children with the necessary conditions for functioning.)

⁹² As I hope is clear from the text, what is culture-dependent is the understanding of 'decent life', but that the threshold is about being able to lead decent life is culture-independent.

I also argued that justice does not require parents to provide their children with more than what is necessary to lead a decent life in the former's social and cultural context. This does not imply that parents are prevented from providing more to their children – conditions for more-than-decent life, conditions for decent life in more than one context, or a combination of the two – only that it is permissible for them not to do so. It also implies that if parents provide their children with more than what is required, it is not a violation of justice to do so in an unequal manner. As already emphasized, this is true as long as all the relevant functionings of all children are above the threshold. If the unequal treatment causes the functionings of the worse-off children to fall below the threshold (e.g. because it harms their self-respect as they have a reason to believe they are no longer treated as dignified beings) then it is an injustice.

On the other hand, what justice requires of parents is not (directly) linked with their children's reciprocation in taking care of the parents' needs in old age (or beforehand if they become needy). This is because according to the interpretation followed here, the parent-child relationship in its *pure* form is an upbringing-relation, not a community or a cooperative scheme for mutual advantage. This does not mean that we would not find other obligations present in families, but if and when we do, it is because in real life family members (as with many other associations) very often display a complex assortment of relationships with each other. Thus, a mother and daughter who run a business together would have further obligations to each other, but they are accidental to their parent-child relationship.

8. Appendix: Justice and nature

The principle argued for in this chapter is meant to encapsulate what parents owe their children as a matter of justice. Meeting the specified threshold with respect to each of the relevant functionings exhausts the claims of justice in this context. Yet to complete my account I want to make explicit in this appendix why it might be the case that not

meeting the threshold is *not* an injustice. To do this I need to attend to the conceptual matter of what ‘just’ and ‘unjust’ can be predicates of.

As I understand it the concept of justice applies to human conduct (of individuals and collectives) and the states of affairs that result from it or that can be altered by it. According to this understanding the predicates ‘just’ and ‘unjust’ may⁹³ apply to:

- (I) Human conduct.
- (II) States of affairs that result from human conduct whether (i) they can be altered by human conduct, or (ii) not.
- (III) States of affairs that do not (initially) result from human conduct but can be altered by it.

And may not apply to:

- (IV) States of affairs that do not result from human conduct and cannot be altered by it.

I take the inclusion of (I) and (II) within the potential scope of justice to be a matter of consensus and the inclusion of (III) and exclusion of (IV) as controversial. To see why (I) and (II) are not controversial, simply think of an act of murder. Attempting murder is unjust, irrespective of whether it happens to be successful or not. This justifies the inclusion of (I). In case the attempt is successful, the irreversible state of affairs in which the victim is dead is unjust and thus including (II-ii) is justified. Now consider a failed murder attempt. The wounded victim is treated in hospital and eventually completely recovers. Still, the victim’s recovery does not make his past injury less unjust and this is why including (II-i) within the potential scope of justice is also justified. Let us move to the harder cases, focusing mainly on (IV).

Some hold that (IV) may also fall within the scope of justice.⁹⁴ I cannot provide an argument *proving* the contrary, but we can call into question the plausibility of that view

⁹³ I do not claim that the following first three categories are necessarily either just or unjust. They may be neither just nor unjust, such as is the human act of writing a PhD thesis. The aim of what follows is to support a much weaker claim about what has the potential of being just or unjust.

by rejecting two lines of thought that may lead to holding it. The first line of thought concerns motivation for action. When we say that some state of affairs is unjust we take it to be bad but we also imply that an action to eliminate this bad is in order. Pointing out an injustice is also a call for action.⁹⁵ And since it is not always possible to know for certain whether an action is possible we may think it better to treat it as if it were possible. In other words, we opt for playing it safe. We take the risk of mistakenly characterizing certain misfortunes as injustices in order to minimize the alternative risk that certain injustices will go unnoticed.

The problem with following this line of thought is that we are likely to end up achieving the opposite of what we intended. By crying ‘injustice’ every time we face a misfortune we cause an inflation of injustice – in a world that is sated with injustice already – and a devaluation of the ‘currency’ of justice. By not willing to take the risk of overlooking any injustice, we are likely to lower our sensitivity to injustice and the moral urgency we ascribe to addressing it. Notice, moreover, that this line of thought does not dispute my contention that (IV) is excluded from the potential scope of justice. All it says is that we should treat certain cases of (IV) *as if* justice applied to them.

A different variation of the action-oriented motivation does not involve an uncertainty about our ability to address some state of affairs, but instead a desire to classify it as a case which, if it were possible, we should do something about.⁹⁶ However,

⁹⁴ For example, G. A. Cohen, “Luck and Equality: A Reply to Hurley,” *Philosophy and Phenomenological Research* 72 (2006): 439-46, at 440: “All innate and otherwise (in the broadest possible sense) inherited differences of advantage are... unjust”; and Larry S. Temkin, *Inequality* (New York: Oxford University Press, 1993), 12-13: “[U]ndeserved inequality is always objectionable; whether or not it is unavoidable, any one is responsible for it, there is anyone for whom it is worse, or it involves different people, societies, places, or times... I maintain it is a natural injustice that some are born blind whereas others are not.”

⁹⁵ Judith N. Shklar, *The Faces of Injustice* (New Haven and London: Yale University Press, 1990), 2: “[T]he difference between misfortune and injustice frequently involves our willingness and our capacity to act or not to act on behalf of the victims, to blame or to absolve, to help, mitigate, and compensate, or to just turn away.” Notice that this holds also for (II-ii) cases where states of affairs that result from human conduct cannot be altered. In these cases it is a call for pre-emptive action.

⁹⁶ Temkin, *Inequality*, 14: “Even if one wants to say... that an *injustice* has been suffered only where there is a perpetrator of the injustice, one can still recognize that a situation is such that if someone *had* deliberately brought it about, she would have been perpetrating an injustice. This tells us something about the situation. It tells us that if the situation were such that we *could* do something to improve it, we

this does not provide a reason for labelling such a case as unjust. It only reaffirms our initial contention that it would be unjust *if* we could do something about it and did not.

While the first line of thought is more about the tactics of eliminating injustice, the second is more fundamental. It may start with reasoning such as the following:

We talk of just men, just actions and just states of affairs. But the last of these uses must be regarded as the primary one for when we describe a man as just we mean that he usually attempts to act in such a way that a just state of affairs results...If we did not have independent criteria for assessing the justice of states of affairs, we could not describe men as just or unjust.⁹⁷

This makes a great deal of sense. We can describe a state of affairs as just or unjust irrespective of the justness of the action that led to it or of the people who performed the actions. If the best-qualified candidate got the job it may still be a just state of affairs even if the act of appointing that candidate was motivated by racist or sexist reasons and was therefore unjust. So as far as justice is concerned we may assess the resultant state of affairs in a way *independent of our normative assessment* of the human conduct that led to it. This in turn may lead us to the mistaken inference that the normative assessment of the former may be *entirely independent* of the latter.⁹⁸ If we can tell the justness of state of affairs S1 irrespective of the justness of the human conduct C1 that led to it, what difference can it make if we now learn that S1 actually resulted not from C1 but instead from the purely natural cause C2? If the justness of S1 is not derived from the justness of its cause then shouldn't its justness remain the same whatever its cause is?⁹⁹ Before answering these questions, we can readily observe how this line of thought leads to the inclusion of (IV) within the potential scope of justice. If the normative

should or, more accurately, there would at least be some (prima facie) reason to do so" (emphasis in original).

⁹⁷ David Miller, *Social Justice* (Oxford: Clarendon Press, 1976), 17-18.

⁹⁸ Let me be clear that Miller does not make this mistaken inference. Quite the contrary, he stresses that for a state of affairs to be properly described as just or unjust it must be one "which has resulted from the actions of sentient beings, or at least capable of being changed by such actions" (ibid., 18).

⁹⁹ Cohen, *Rescuing Justice and Equality*, 332: "[C]onsider for a moment justice as a property not of persons but of distributions... whatever the circumstances, such justice might at the very least, *happen* to be there, if only by accident" (emphasis in original). I am not suggesting that Cohen has committed the false inference but he does hold the view that the justness of states of affairs is independent of their causes.

assessment of a state of affairs is independent of its causes then justice applies in the same way to the same S1 whether it falls under (II-ii) (because it resulted from human conduct) or under (IV) (because it did not). The potential scope of justice should therefore include (II-ii) as well as (IV).

To see why this inference is wrong we can make use of the *structure* of an argument made by Cohen in which he distinguishes between causal and normative fundamentality.¹⁰⁰ According to my understanding of justice, human conduct is just (or unjust) in view of its tendency to produce just (or unjust) states of affairs. The state of affairs is the one that is *normatively fundamental* and in view of which human conduct is normatively assessed. But the state of affairs is just (or unjust) because it results from certain causes, namely certain kinds of human conduct. And so, human conduct is *causally fundamental* for just (or unjust) states of affairs to result. Paraphrasing Cohen, a state of affairs is just (or unjust) because of the nature of its cause, a certain human conduct, and this human conduct counts as just (or unjust) because what it causes is unjust. To illustrate, let us return for a moment to the issue of family justice. We can say the following (by paraphrasing Cohen once more):

- (I) The child C is neglected by the parent P, since C's level of functioning does not meet a certain threshold by virtue of P depriving C of the required conditions, and where that causes C's level of functioning to not meet a certain threshold, that level of functioning is unjust.
- (II) The deprivation of certain conditions from C by P is unjust because it causes the unjustly low level of functioning described in (I).

So it is unjust when children's functioning falls below a threshold level because it reflects an unjust parental conduct (neglect) which is unjust because it tends to produce precisely such a fall in functioning level. We can now see why the inference from

¹⁰⁰ The original argument, which concerned the injustice of exploitation in Marx, appears in G. A. Cohen, *Self-Ownership, Freedom and Equality* (Cambridge: Cambridge University Press, 1995), 197-200. As the previous quotes from Cohen indicate, he does not share the substantive view in support of which I employ the structure of his argument here.

normative independence to causal independence is flawed. It is plausible to hold that a certain conduct is just (or unjust) because of the state of affairs it produces (or tends to produce) and that this state of affairs is just (or unjust) only because it results (or is sustained) through that conduct. The fact that a state of affairs is normatively independent of the normative status of its cause does not entail that it is normatively independent of the nature of the cause.

As I said in the beginning of the discussion of (IV), all this does not prove its inclusion within the potential scope of justice to be wrong. The conviction of those insisting that justice may apply to natural happenstances, about which there is nothing to be done, need not follow from the two lines of thought rejected here. It may, for example, be a foundational conviction about what justice means. If some define justice as an inequality in brute misfortune then none of what I have said proves them wrong. Yet I have tried to show that two *prima facie* reasons for approving it are unjustified. I hope this shifts at least some of the burden of proof from my camp to theirs.

Before concluding, it is left to briefly explain why it is justified to include (III) within the potential scope of justice. We said that the normative assessment of states of affairs is dependent on their cause, and so it seems to follow that if we exclude (IV) from the scope of justice then we should also exclude (III) as they both share the same kind of cause, namely a natural one. Yet we should be careful here. It is true that the initial state of affairs that results from nature is neither just nor unjust. Justice does not apply to it as it does not apply to states of affairs of the (IV) kind. But if some human conduct can alter this state of affairs then its *continuation* does fall within the potential scope of justice. Thus the (initial) state of affairs in which a person suffers from some bacterial infection is neither just nor unjust. But the fact that he is not provided with an available treatment may turn this (continuing) state of affairs into being unjust. If indeed there is an injustice here, it includes not only the prevention of the treatment but also the continuing bacterial infection. The fact that a state of affairs initially resulted from

nature does not matter if it can now be altered by human conduct.¹⁰¹ In such a case, the *continuation* of this state of affairs does result from human conduct (or abstention of human conduct, which is also human conduct) and so it may be scrutinized by justice.¹⁰²

The result of this discussion is that a state of affairs in which a child's level of functioning does not reach the threshold is not necessarily unjust. Justice does require parents to provide the conditions for their children to meet the threshold level of functioning but this may, at times, be out of the parents' reach. Not meeting the threshold level will always be unfortunate, perhaps even tragic, but in itself does not imply an injustice.

¹⁰¹ Shklar, *Faces of Injustice*, 81: "It is not the origin of the injury, but the possibility of preventing and reducing its costs, that allows us to judge whether there was or was not unjustifiable passivity in the face of disaster."

¹⁰² Again, although necessary, this fact alone is not sufficient for making a naturally-caused state of affairs either just or unjust. The state of affairs that there is a fly in my study is neither just nor unjust irrespective of whether or not this can now be altered by my actions.

Chapter 5

Justice, Family and Polity

The duke of Sheh informed Confucius, saying, “Among us here there are those who may be styled upright in their conduct. If their father have stolen a sheep, they will bear witness to the fact.” Confucius said, “Among us, in our part of the country, those who are upright are different from this. The father conceals the misconduct of the son, and the son conceals the misconduct of the father. Uprightness is to be found in this.”

(Analects of Confucius)¹

1. Introduction

The family is the primary site of upbringing. According to the principle of family justice put forward in the previous chapter, it is where children are to be provided with the conditions to achieve the functioning level of decent life prospects. Yet a theory of family justice cannot end here, for the achievement of justice in the family is heavily influenced by the social and political setting; and its implications, in turn, go beyond the family and may have profound effects on its surroundings. Children grow *in* families but they grow *into* community members and citizens. The trivial fact that the children of today are the citizens of tomorrow makes inevitable some overlap of family and state concerns. However if the political domain is that of citizens publicly interacting with each other and with the state as their shared government, then the family is not strictly political. The particularity and privacy of the parent–child relationship makes it different from being a simple extension of the citizenship mode of relationship.

This ambivalent relation between the familial and the political is nicely captured by the early modern picture of the family as a ‘little state’

¹ Confucius, *Confucian Analects, The Great Learning, and The Doctrine of the Mean*, trans. James Legge (New York: Dover Publications, 1971), 270.

within which children are taught the virtues of obedience and prepared for citizenship (or, more often, subjection) in the larger state, the political community as a whole. This looks like a formula of integration, but it also had another purpose. If the family was a little state, then the father was a little king, and the realm over which he ruled was a realm the king himself could not invade. The little states bounded and contained the larger one of which they were also the parts.²

As I hope will become clear towards the end of this chapter, I do not adhere to the view that the realm of the 'little state' is off-limits to the state. But I do wish to develop the idea suggested above that the family as the primary site of upbringing contains formulae of *both integration and separation*. Familial upbringing is not political, yet it has bearings on the political. And while the polity has interests in the upbringing of its future citizens it leaves the primary responsibility for this in the hands of private individuals. In this chapter I examine this complex dynamic and show how the demands of justice that arise along the axis of citizens–parents–children reflect an inherent structural tension, which is the result of the conflicting yet coexisting formulae of integration and separation of family and polity.

Crudely put, we can say that a society or family is just when it is organized to meet the demands of justice and its members comply with those demands. As both society and family can be either just or unjust, we can distinguish between interactions of family and polity in light of four general situations depicted in Figure 1 below.

Fig. 1

		Society	
		Just	Unjust
Family	Just	(I)	(II)
	Unjust	(III)	(IV)

² Michael Walzer, *Spheres of Justice: A Defense of Pluralism and Equality* (New York: Basic Books, 1983), 232. This should not be confused with the contemporary 'little state' picture of the family (see Introduction, note 6 and accompanying text), which fails to capture the tension between family and state.

Of course this simplifies matters unrealistically. I here bracket the enormous range of intermediate associations and affiliations lying between the levels of family and citizenship (some of which are considered in the discussion that follows). I also ignore contexts wider than the polity that may be relevant to the issues at hand.³ This is not to imply they are of no significance but to constructively narrow the discussion to this particular interaction. I start with situation (I) in which both society and family are just. Section 2 discusses the formula of integration and Section 3, the formula of separation. The discussion reveals that the tension between family and polity is present even when both comply with the demands of justice. Whether and to what extent this tension compromises justice depends on the specific circumstances that obtain. Section 4 addresses situation (II) and considers what justice requires of parents in the face of unjust social circumstances. In light of the possibility of situation (III) I discuss in Section 5 the issue of state action in pursuit of family justice. Situation (IV) is an unhappy combination of situations (II) and (III). Its normative implications are fact-dependent on which situation out of (II) and (III) it is closer to. Accordingly, the following discussion does not give it separate treatment, although it does consider what I hope to be relevant guidelines for thinking about real-life situations of this type.

2. Formula of integration

Children are both (potentially full) citizens of their political society and members of particular families within society.⁴ Much of the relation between the demands of justice stemming from these two contexts depends, of course, on the way in which we understand the context of citizenship. Is political society a 'society of societies'

³ See the discussion in Colin M. Macleod, "Parental Responsibilities in an Unjust World," in David Archard and David Benatar (eds.), *Procreation and Parenthood: The Ethics of Bearing and Rearing Children* (Oxford: Oxford University Press, 2010).

⁴ Unfortunately, not all children; some are refugees, some do not have families. I do not address these cases here.

guaranteeing only the terms of their mutually indifferent coexistence? Can we go beyond this to view it as a system of cooperation for mutual advantage over time? Or perhaps go far as thinking of political society in terms of community, its members sharing a common identity and enjoying strong bonds of solidarity with each other? Taking a stand on these questions would require writing a treatise on social justice and is clearly outside the scope of this project. Yet we can still offer (what I hope to be) a relatively uncontroversial observation that modern citizenship has some notion of equal treatment as its operative principle. Whether this should be taken more as a procedural or as a substantive notion, would be disputed by libertarians, liberals and socialists depending on their underlying understanding of political society. But I think all can roughly agree that “justice always requires the equal treatment of citizens”⁵ while disagreeing what this entails. This should be sufficient to establish the source for both the formulae of integration and separation of family and polity.

Postponing the discussion of the latter to the next section, the source for the formula of integration is the concern for the interests of children which both state and family ought to share, whether seeing them as (potentially full) citizens or family members. The citizens of tomorrow are brought up in families but, as David Archard observes, the care of children is never exclusively devolved.⁶ And even if *care* of children had been entirely devolved to families, some other interests of children would still remain the responsibility of the state. The formula of integration results in family and state complementing each other in meeting the interests of children. In what follows I explore some of the forms this formula may actually take.

At a very abstract level, society and family would probably exercise different distributive principles. While the previous chapter concluded that the appropriate principle for the familial context is one of providing conditions for functionings up to the level of decent life prospects, there is no reason to assume that a similar principle would

⁵ David Miller, “Two Ways to Think About Justice,” *Politics, Philosophy and Economics* 1 (2002): 5-28, at 23.

⁶ David Archard, *The Family: A Liberal Defence* (Basingstoke: Palgrave Macmillan, 2010), xviii.

apply across the citizenry. The principle may present us with a different metric (such as opportunities or impersonal resources), a different pattern of distribution (strictly egalitarian, prioritarian, or a different threshold of sufficiency), or some combination of the two. Thus it may be the case that every child is provided by his or her family with conditions for functionings at least up to the required threshold while the state gives priority to improving the position (measured in capabilities) of the worst-off children. An alternative scenario could be one in which every child is provided with an equal share of impersonal resources pooled together by the state and, again, with more specific conditions for functionings by his or her family.⁷

The complementary ways in which state and family may work can also be observed in the distribution of specific goods and burdens. In some instances the division of labour would be such that each context is responsible for a different good, the distribution of which has no bearing on the other. Take, for example, political rights that are distributed equally to all citizens (e.g. freedom of speech), and the conditions for achieving a decent life level of the functioning of *emotions*. The fact that justice requires different things in these two contexts does not pose a problem. There is a clear division of labour between the two spheres generated by the distinct mode of relationship in each.⁸

Of course this is not always (or even often) the case. It is more likely that family and state distributions would not be completely independent of each other. Think of a good that is distributed in both contexts and according to the same pattern. Such a one is security, distributed by state and parents to meet a certain threshold, say, the level that allows leading a decent life. That both contexts distribute the same good according to the same pattern need not follow from the same fundamental principle of justice. While in the family context it is part of the conditions for the functionings of *life* and

⁷ For policy-oriented studies of these two social targets, see, respectively, Wolff and de-Shalit, *Disadvantage*, especially Chapters 8-10; Bruce Ackerman and Anne Alstott, *The Stakeholder Society* (New Haven and London: Yale University Press, 1999).

⁸ It is a clear division as long as the two contexts operate properly. In cases of emotional neglect the state may have to intervene (see Section 5 below). This is another dimension of the formula of integration as the state does have an interest in children being brought up to be functioning citizens.

bodily integrity, in the political context it may stem from equal citizenship. What is important to notice, however, is that each context has its peculiar ways of delivering this good and that these ways are, in this case, complementary to each other. Thus, the polity would promote the security of its members through maintaining an army and a police force, while parents would guard their children from everyday dangers such as crossing the road and would be mindful of where and with whom their children socialize. Parents cannot build their own army (although some do supplement the police with a neighbourhood watch and other local initiatives), and the state cannot watch over the steps of every child. So while each context generates the same requirement to distribute a certain good according to a certain pattern, each carries out that requirement in a different way that is complementary to the other.⁹

Exploring the demands of justice in each context can also help us to resolve what may initially appear as a conflict between the two. Here it is not the distributions themselves that are complementary but the considerations of what the distributive outcome should be. Recall the case discussed in the previous chapter of the Jehovah's Witness parents who refuse, as a matter of conscience, to provide a lifesaving blood transfusion for their child. This scenario is often perceived as presenting a conflict between family and state. According to this view we are required to strike a balance between the rights of parents over their children and the state's authority to protect them. But if the argument of the previous chapter is valid then the demands of justice in both contexts would point in the same direction. That is, social justice as well as family justice would require the provision of the blood transfusion to the child. Social justice would require it because the child is an equal member of society and therefore eligible for the same medical treatment that other citizens receive. Family justice would confirm the conclusion from its own perspective: parents are required to provide the conditions for their child to lead a decent life and the blood transfusion is such a necessary

⁹ I do not wish to suggest that the same good and the same pattern being common to two different contexts always results in a complementary relation. It may alternatively lead to a competing relation between the two contexts, as I discuss in the following section.

condition. Putting it in negative terms, parents cannot sacrifice their child's life, but preventing the child from having a blood transfusion entails precisely that; therefore, parents cannot prevent their child from having a blood transfusion.¹⁰ So here we could say that the considerations of justice to which the two contexts give rise are complementary in the sense that they both point to the same distributive outcome.

All the aforementioned complementary interactions between family and state are the result of *principled considerations*. We assumed certain distributive principles to apply *independently* to each context and then examined their combined outcome. Yet the formula of integration may go beyond this in view of what we can term *strategic considerations*.¹¹ These come into play when we promote an outcome recommended by a principled consideration arising from one relational context, through acting in *another* relational context. Let me explain. The principled consideration of what goods and burdens to distribute and how, arises from the nature of the relationship that obtains between the parties. The distributive goals may be carried out through the choices and actions of individuals, institutions established for this cause, or some combination of the two. As Liam Murphy suggests,

[w]e should not think of legal, political and other social institutions as together constituting a separate normative realm, requiring separate normative first principles, but rather primarily as the means that people employ the better to achieve their collective political/moral goals.¹²

¹⁰ This line of reasoning may not be internal to the Jehovah's Witness perspective but it is to the perspective of the parent-child relationship and the conception of justice attached to it. Thus, it is independent of the demands of social justice. Admittedly, the perspectives of family and social justice may still conflict over the issue of *when* the blood transfusion is necessary (see Chapter 4 note 34 above). In general, one perspective might be more tolerant towards certain risks than the other.

¹¹ I borrow the terms for these two kinds of considerations from Colin Macleod, but my use of them differs from his. See Colin M. Macleod, "Raising Children: Who Is Responsible for What?" in Samantha Brennan and Robert Noggle (eds.), *Taking Responsibility for Children* (Waterloo, ON: Wilfrid Laurier University Press, 2007).

¹² Liam B. Murphy, "Institutions and the Demands of Justice," *Philosophy and Public Affairs* 27 (1999): 251-91, at 253. This is not to deny that an institutional framework can in turn alter the original relationship between the parties. In such cases institutions become something more than means for promoting certain collective ends. But then the question re-emerges: how should we meet the demands stemming from this

But this opens up the possibility that in certain circumstances the demands of justice stemming from one relational context would be better met through the distributive mechanisms that primarily belong to a different relational context. Therefore we could say that we distribute a certain good in a *strategic* rather than *principled* way. Here, “what is of importance is not *through whom* advantages are distributed, but rather *to whom* they are distributed.”¹³

Returning now to the formula of integration of family and state we can observe that we sometimes choose to allocate certain goods or burdens through either of them according to strategic rather than principled considerations. Families are not, primarily, vehicles for promoting political ends, and the *raison d’être* of states is not to help parents in discharging their duties towards their children. But it may still be legitimate, based on strategic considerations, to entrust the state with meeting a demand of family justice, or to promote a social justice goal through the family sphere.¹⁴ While the relevant demand of justice remains attached to the original relational context, it is not necessarily unjust for the required distribution to be carried out through the allocation mechanisms of the other context. Let me illustrate how this can work in both directions.

Take first the possibility of using functions of the state as a tool for discharging some of the demands of family justice. In the previous chapter I suggested *play* as a functioning of children which parents are required to provide conditions for. This means it is the parents’ responsibility to provide their children with means of play, make sure their children have available time for playing and actively encourage them to take part in various activities of this sort. But most parents do not have at their disposal enough resources (land, money, equipment) for erecting playgrounds for their children. Here, parents can turn to state or local council mechanisms and pursue (part of) their duties

altered relationship? And in answering it we can affirm the existing institutional framework or adapt it to better meet the current demands.

¹³ Avner de-Shalit and Yonathan Reshef, review of *Levelling the Playing Field* by Andrew Mason, *Philosophical Quarterly* 59 (2009): 756-60, at 759.

¹⁴ The legitimacy of the decision would of course depend also on the fairness of procedure through which the decision was made. The fact that it would make the children’s lives better does not in itself make it legitimate to coerce childless individuals into shouldering some of the burdens of childrearing.

towards their children indirectly. It is plausible to argue that fellow citizens or community members are not required as a matter of justice to provide the children of others with conditions for play. So we may not have principled considerations to distribute play across society.¹⁵ The fact that the state or local council erects playgrounds does not necessarily mean that it is a demand of justice in the respective relational contexts. It may be an implementation of family justice through distributive mechanisms that primarily serve other relationships.¹⁶

Strategic considerations can also work in the other direction, channelling certain social goods or burdens through the family. Take, for example, the care for the elderly. When society provides financial support to kinship carers it seems to imply that it regards this good (for the elderly; it is a burden for the carers) as falling at least in part under its remit. Yet it carries out this responsibility indirectly by providing (some of) the resources for delivering this good in a different relational context.

Thus the formula of integration seems to have two dimensions, that is, principled and strategic. The principled integration stems from the fact that when parents bring up their children they also bring up the future citizens of the polity. Therefore it should not come as a surprise when the demands justice makes on parents with respect to their children are complementary to the demands made on the citizenry with respect to the next generation thereof. On top of this, however, there is also a strategic dimension for integration according to which the demands of justice in one context may be channelled through the distributive mechanisms of the other in order to be met. Under the formula of integration, strategic considerations do not seem illegitimate or unjust.¹⁷

¹⁵ If we follow the later Rawls, for example, and hold that social justice is primarily concerned with the needs of persons *qua* citizens, then *play* does not seem to be a functioning of much relevance to this context. See Colin M. Macleod, "Primary Goods, Capabilities, and Children," in Harry Brighouse and Ingrid Robeyns (eds.), *Measuring Justice: Primary Goods and Capabilities* (Cambridge: Cambridge University Press, 2010), especially 178-83; cf. Tamar Schapiro's argument, cited in Chapter 4 note 19.

¹⁶ Surely it may also be driven by non-justice considerations, such as in cases of philanthropic donations.

¹⁷ I think that this distinction between principled and strategic considerations can work to explain the ambiguous relation between society and family in David Miller's contextualist theory of justice. On the one hand he specifically mentions the family as the main locus of direct solidaristic relationships in modern liberal societies (*Principles of Social Justice* [Cambridge, MA: Harvard University Press, 1999], 26). This seems to imply that family relations constitute a distributive context on their own. In an earlier book,

3. Formula of separation

If the formula of integration originates in the family bringing up children who are also future citizens, the formula of separation comes to the fore because the family is *not* required to bring up children *as* future citizens. This can be observed in two ways. First, the principle of family justice implies that children are to be provided with conditions for decent life prospects within the parents' social and cultural context. Thus stated, the principle of family justice does not refer to the strictly political context and the demands of citizenship. These demands are *not necessarily* incorporated within family justice – a view which I defend later.

Yet there is a more fundamental sense in which the family is not required to bring up children as future citizens. This refers not to the demands of justice stemming from each of these contexts, but to the internal logic¹⁸ of these relational contexts – the different ways in which we relate to each other as family members and as fellow citizens. As I argued in Chapter 3, the distinctive feature of the parent–child relationship is its element of identity – that sense of continuity between parent and child. The family is thus an agent of particularity, through which the child obtains a biography of her own. It is through our parents that we first come to have a name, lineage, locality (and so much more). *Our* life story begins with *them*. From the perspective of citizenship, however, all this is sidelined. “A citizen of Rome,” Rousseau wrote, “was neither Caius nor Lucius; he was a Roman.”¹⁹ When entering the public realm, we are meant to set

this is made more explicit as the family is located within the scope of private justice “which concerns the dealings of a man with his fellows when he is *not acting as a participant in one of the major social institutions*,” and the potential conflict between private (and *inter alia*, family) justice and social justice is acknowledged (*Social Justice* [Oxford: Clarendon Press, 1976], 23; emphasis added). On the other hand, Miller includes the family as one of the “substate institutions that individually or together produce distributive effects that range across a society,” and to which, as a consequence, principles of social justice “must apply” (*Principles of Social Justice*, 12, and the corresponding endnote at 272-3). As such an institution, Miller views the family as partaking in the fulfilment of individuals' needs *across society* (*ibid.*, 247).

¹⁸ I borrow this phrase from Michael Walzer, “Liberalism and the Art of Separation,” *Political Theory* 12 (1984): 315-30.

¹⁹ Jean-Jacques Rousseau, *Emile or On Education*, trans. and ed. Allan Bloom (New York: Basic Books, 1979), 40.

aside these biographical particularities. “Our personal lives and commitments may be very different, but we are all equally citizens, and it is as citizens that we advance claims in the public realm and assess the claims made by others.”²⁰ If the family fosters and reinforces particularity, citizenship pulls towards uniformity.²¹

The tension between citizenship and family is inherent even in cases where a clear priority is given to one context over the other. To illustrate, consider Rousseau’s description of the ultimate “female citizen”:

A Spartan woman had five sons in the army and was awaiting news of the battle. A Helot arrives; trembling, she asks him for the news. “Your five sons were killed.” “Base slave, did I ask you that?” “We won the victory.” The mother runs to the temple and gives thanks to the gods.²²

This Spartan mother did not openly show any sense of conflict between her familial and civic duties as the latter clearly had precedence over the former. Yet even in such an extreme case of acquiescence the tension between the two perspectives, and the conclusions drawn, remains: for the patriot, the result of the battle is victory; for the parent, personal tragedy. The tension results from the fact that the two perspectives are, to some degree, independent of one another. Even in Rousseau’s Sparta, the familial perspective is not entirely subsumed by that of citizenship, although it is set aside in favour of the latter. The ultimate citizen’s lack of interest in the first response of the Helot does not imply it was irrelevant.²³

The friction between family and citizenship is already present in the small and homogeneous polity of Rousseau’s Sparta. What diffuses the tension there is the fact that the demands of citizenship are an integral part of the parents’ social context within which they bring up their children. In Rousseau’s Sparta, being a community member

²⁰ David Miller, *Citizenship and National Identity* (Cambridge: Polity Press, 2000), 41.

²¹ This theme is most fully developed in Hegel’s treatment of the family in his *Phenomenology of Spirit* and *Philosophy of Right*. For a helpful summary, see Jeffrey Blustein, *Parents and Children: The Ethics of the Family* (New York: Oxford University Press, 1982), 90-5.

²² Rousseau, *Emile or On Education*, 40.

²³ For a reversed paradigmatic case, in which family loyalty is prioritized over the state’s laws, see the interpretation of *Antigone* in G. W. F. Hegel, *Phenomenology of Spirit*, trans. A. V. Miller, ed. J. N. Findlay (Oxford: Oxford University Press, 1977), 266-89.

boils down to being a citizen and so the particularities of the family must eventually be set aside. If the value of the “civil man” is “determined by his relation to the whole, which is the social body,” then the ultimate task of his upbringing should be to “transport the I into the common unity, with the result that each individual believes himself no longer one but a part of the unity.”²⁴ However, we do not live in Rousseau’s Sparta, as Rousseau himself was all too aware. In a multicultural world the tension between family and citizenship becomes more intense. It is not only our lineage that is bracketed by the perspective of citizenship, but also local traditions, ethnicity, religion, and perhaps even our mother tongue.

I do not wish to exaggerate this tension. Many of us have responded to it by assuming what Michael Walzer calls hyphenated identities.²⁵ Rather than Roman or Spartan we are now Catholic Italian-Americans or Muslim Indian-British or Israeli-Yemenite Jews. As long as the different communities within which we are members are “pluralized from within,” some balance can probably be found since “the claims they make to reproduce themselves are already qualified by a recognition of similar (but different) claims made on behalf of some or even all of their own members.”²⁶ In such cases there is no reason why parents will not be able to bring up their children according to these hyphenated identities and the divided loyalties that spring from them. They will provide their children with conditions to lead a decent life as citizens and as members of their religious and ethnic communities.

I stated my wish not to exaggerate the tension between family and citizenship in a multicultural world as I think that in many circumstances hyphenated identities may offer a feasible response. But I do not wish to trivialize it either. Placing a hyphen between one’s different affiliations does not make the tension go away. The challenge is to offer an understanding of citizenship that could be shared by individuals belonging to

²⁴ Rousseau, *Emile or On Education*, 39-40.

²⁵ Michael Walzer, “What Rights for Illiberal Communities?” in Daniel Bell and Avner de-Shalit (eds.), *Forms of Justice: Critical Perspectives on David Miller’s Political Philosophy* (Lanham: Rowman and Littlefield, 2003), 125. In the context of American history, the term had been used in a disparaging sense which neither Walzer nor I wish to imply.

²⁶ *Ibid.*

different communities. Yet by formulating such an understanding we are pulled in opposite directions, on the one hand, by inclusiveness, and on the other, social unity. Aiming for social unity as more than a prudentially-motivated *modus vivendi* will probably involve an idea of national community with shared history and public culture. David Miller has argued that only a relatively thick version of citizenship such as this can serve “both as a source of ethical standards and as a framework within which people will want to justify their decisions to one another by reference to criteria of justice.”²⁷ But if we also want to include all members of society then our understanding of citizenship must be rather thin. After all, the shared history and public culture of a Catholic African-Caribbean, an ultra-Orthodox Jew and a Protestant Scot – all holding UK passports – are quite limited. Thus the national identity underlying the understanding of citizenship must be thick enough to foster social cohesion yet sufficiently thin to accommodate social diversity. To achieve this delicate balance,

[w]hat must happen in general is that existing national identities must be stripped of elements that are repugnant to the self-understanding of one or more component groups, while members of these groups must themselves be willing to embrace an inclusive nationality, and in the process to shed elements of their values which are at odds with its principles.²⁸

This is how we come to have hyphenated identities in which each component accommodates the others. Yet it is clear from this passage that even when possible this entails some loss and (what is perhaps less clear) that this loss will be unequally shared. Mutual accommodation will require more sacrifice from some than from others as the shared history and public culture will have a closer affinity with the history and culture of some communities than others. Even if all identities could be hyphenated they would still display varied relations between the two sides of their hyphen(s). From the

²⁷ Miller, *Citizenship and National Identity*, 78; see also his *On Nationality* (Oxford: Oxford University Press, 1995), Chapter 4. Yael Tamir makes a convincing case showing that many liberals assume, albeit implicitly, a national community in the background of their theories of justice; see her *Liberal Nationalism* (Princeton, NJ: Princeton University Press, 1993), Chapter 6. The reliance of Rawls’s political liberalism on a shared public culture made this background assumption more explicit.

²⁸ Miller, *On Nationality*, 142.

perspective of the family, some parents will require manoeuvring skills (which not all of them possess) to align their more communitarian values and practices with those of the polity. From the citizenship perspective, trying to equalize these burdens will lead away from simple forms of equal treatment and universal citizenship towards incorporating some elements of special treatment and differential citizenship.²⁹ This makes social justice a very complex ideal, even if not an impossible one.

The hyphenated-identities response is not without its shortcomings. This is realized once we observe that it is a distinctly liberal response, one which is not suitable for dealing with illiberal communities unwilling, and perhaps unable, to get hyphenated. Michael Walzer offers this charge on their behalf.

“But if you mean to tolerate us,” they would say, “if you mean to recognize our right to live in our way and to raise our children to value and sustain that way, then you must allow us full control over their education. For our way is an integral whole, complete in itself, leaving no aspect of personal or social life without guidance and constraint. It can’t be compromised; it can’t be combined with a little bit of this and a little bit of that... In any case, we can’t compete for the allegiance of our children, for until we have taught them the value of our ways, the outside world is sure to look more exciting; its gratifications come more quickly; its responsibilities, for all your talk of citizenship, are much easier to live with than the responsibilities we impose – to God, to our ancestors, to one another. We simply can’t survive as a voluntary association of autonomous individuals...”³⁰

Such totalizing communities, as Walzer calls them, seem to pose an either/or dilemma as the demands of justice arising from family and citizenship come into conflict. Thus we either educate future citizens in mutual respect thereby exposing them to some alternative ways of life, or allow fundamentalist religious parents to authoritatively transmit their own values and practices to their children. Providing for the *needs* of

²⁹ See Yael Tamir, “Two Concepts of Multiculturalism,” *Journal of Philosophy of Education* 29 (1995): 161-72, at 161-6. Miller seems ready, albeit reluctantly, to acknowledge this dynamic: “the old idea of the welfare state as an institution whose function was to provide uniform services to different sections of the community may have to be replaced by a more diverse set of institutions supplying different services to different groups, even if this means moving away from simple ideas of equal treatment” (*Principles of Social Justice*, 264).

³⁰ Walzer, “What Rights for Illiberal Communities?” 128-9.

children as both future citizens and community members is not compatible in this instance. In other cases the incompatibility may exhibit itself through the different *responsibilities* attached to citizenship and membership in particular communities. Such is the long-lasting conflict in Israel between the ultra-Orthodox Jewish community and the general public with respect to the burden of military service. From the perspective of citizenship the exemption granted to able ultra-Orthodox Jewish men and women is viewed by many as unjust. Yet its purpose is to allow them to shoulder the specific burdens of their own community – for men, studying Torah, and for women, procreation.³¹ How should we decide then which context must enjoy primacy; which demand of justice must give way to the other?

Two potential responses, both attempting to deny the conflict, need to be rejected. The first reasserts the primacy of citizenship. It calls for recognizing “the great values of the political against whatever values normally conflict with them.”³² These values of “equal political and civil liberty, fair equality of opportunity, and economic reciprocity as well as the social bases of citizens’ self-respect,” are “not easily overridden.”³³ We should thus be citizens first and members second. The problem, however, is that members of totalizing communities do not share this argument. They do not necessarily ignore the political values embodied in a conception of social justice. But they eventually decide, even if not without difficulty, to override (some of) its demands in favour of the particular demands of their own community to which they ascribe yet greater value. Ultimately, they opt for being members first and citizens second, and the question re-emerges: how should we balance the perspectives of ‘citizens first’ with that of ‘members first’?

Some may insist that this is only a superficial distinction, or not one that arises from considerations of justice, for the requirements of citizenship are already included

³¹ The idea is that for women to get married and procreate they must retain their purity, and this is not possible in the mixed-sex military framework.

³² John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), 170. See also Charles Larmore, “Political Liberalism,” *Political Theory* 18 (1990): 339-60, at 349-51.

³³ John Rawls, *Justice as Fairness: A Restatement* (Cambridge, MA: Harvard University Press, 2001), 189-90.

within the perspective of family justice. Both perspectives, in fact, point in the same direction. Members of totalizing communities cannot do without citizenship for they would be “deprived of protection, lack civic and welfare rights, have no passport, and officially belong nowhere.”³⁴ If citizenship is indeed “indispensable for the well-being of modern individuals,”³⁵ then parents – required to provide their children with conditions for decent life prospects – are, *inter alia*, required to adapt their children to the terms of citizenship. Yet what this line of argument overlooks is that it is exactly the terms of citizenship which are here called into question. It is not that totalizing communities want to do entirely without citizenship; rather, they offer a different understanding of it that does not conform to the prevalent view of the polity. They would probably be willing to assume a minimal notion of citizenship yet not the thicker one that the majority of the polity shares. As Walzer diagnoses, “it’s democracy that makes the difficulty.”

Democratic citizenship is an inclusive status, and it is an official status, a kind of political office that carries with it significant responsibilities... In a multinational or multireligious empire, where all the members of the different nations or religions are imperial subjects whose only responsibility is obedience, the emperor has little reason to interfere in the different projects for cultural reproduction carried on in communal schools... There is no communal life for which his subjects need to be trained... But democracy requires the common life of the public square, the assembly, the political arena, and certain understanding must be shared among the citizens if what goes on in those places is to issue in legitimate laws and policies.³⁶

Since democratic citizenship is not a necessary condition for having decent life prospects it is implausible to argue that justice inherently requires parents to enrol their children in *democratic* citizenship. The demands justice makes on parents and citizens do not necessarily conflict yet they are not inherently compatible. The open conflict is not conceptual but circumstantial: it results from totalizing communities finding themselves

³⁴ Tamir, *Liberal Nationalism*, 124.

³⁵ *Ibid.*

³⁶ Walzer, “What Rights for Illiberal Communities?” 131-2.

in the midst of a liberal-democratic public culture; when we have, so to speak, bounded societies within bounded societies. In such circumstances we face the following dynamic:

A liberal state dominated by a liberal theory of the good – by a particular conception of justice – will find itself pressed by those who dissent from the orthodoxy. To the extent that they are not suppressed, this will be because the principles of the liberal theory of justice are dishonoured or ignored. A liberal state dominated by the more minimal liberalism of the independent umpire will find itself pressured to inject greater substantive content into its determinations... [T]here is always a tendency towards centralization and standardization under the influence of the voice of the majority.³⁷

How should we respond to this? We can start by trying to demarcate the borders between societies in such a way that one is no longer bounded within the other. This is what we do when we follow a principle of political self-determination for national communities (which are totalizing communities of a sort).³⁸ Yet not all totalizing communities have political aspirations. Some religious and aboriginal communities wish not to have a polity of their own but to be left alone by the polity. Demarcation here can take the form of “internal exile,” allowing for “small pockets of people who do not share in the national identity and are not in the full sense citizens,” within the borders of the state.³⁹ This might be had only when communities are relatively very small in numbers and geographically concentrated; otherwise, it will require some segregationist policies undermining the integrity of the polity.

In all other cases we do not seem to have any principled alternative to a contingent and untidy *modus vivendi*. If the demands of justice are generated by the nature of the relationships that exist between different parties, then the question of how to balance those relationships transcends the relationships themselves and *ipso facto* goes beyond the demands of justice. And the balancing will be an asymmetrical

³⁷ Chandran Kukathas, *The Liberal Archipelago: A Theory of Diversity and Freedom* (Oxford: Oxford University Press, 2003), 269.

³⁸ See Miller, *On Nationality*, Chapter 4; *Citizenship and National Identity*, Chapters 2, 7 and 8.

³⁹ Miller, *On Nationality*, 145.

process whereby liberal citizens compromise their own principles (of social justice) for principled reasons (e.g. toleration), while illiberal community members make concessions out of necessity as their own principles (of family justice) do not leave room for a more fundamental compromise.⁴⁰ Walzer concludes that the best we can hope for is both sides coexisting antagonistically “for there are only compromises that have to be made and remade endlessly and that are sure to leave both democratic citizens and community members unhappy.”⁴¹

Where there is no right solution, “no deduction from a set of principles,”⁴² philosophers have little to say and are inclined to give way before politicians searching for practical arrangements. Yet philosophers are still left with something, even if not much, to say, and in the remainder of this section I want to suggest what that is. Recall the distinction made in the previous section between two types of distributive considerations, principled and strategic. Under the formula of integration it was not necessarily unjust to meet the demands stemming from one relational context through the mechanisms that primarily belong to another. The formula of integration, in other words, allowed for distributions according to strategic alongside principled considerations. This, I now claim, does not hold true for the formula of separation. In cases falling under its remit, it is an injustice to use the distributive mechanisms of one relational context to promote the conflicting demands of another, thereby turning the mechanisms of the original context against itself. When this is done we can say, borrowing from Walzer, that institutions stop being responsive to their own internal logic which is now “repressed by tyrannical force, crossing the lines, breaking through the walls established by the art of separation.”⁴³ Using state mechanisms in a way that undermines social justice, or intervening in the family so legitimate parental conduct is

⁴⁰ Tamir, “Two Concepts of Multiculturalism,” 170. See also Thomas Nagel, *Equality and Partiality* (New York: Oxford University Press, 1991), 170: “Justice may enable parties to adjudicate their differences of interest and some of their differences in conception of the good, but it cannot regulate their differences about justice. To live together peacefully in such circumstances they will have to find some still higher-order moral or at any rate practical idea.”

⁴¹ Walzer, “What Rights for Illiberal Communities?” 133.

⁴² *Ibid.*

⁴³ Walzer, “Liberalism and the Art of Separation,” 319.

hindered, violates their “institutional integrity.” This amounts to committing an injustice and thus marks a boundary for *modus vivendi* compromises we should avoid crossing as much as possible.

The moral significance of the distinction between compromising justice and committing injustice may become clearer if we test our intuitions against concrete cases. Consider first the example of Israel, where the state not only allows for but heavily funds ultra-Orthodox Jewish schools which include in their curriculum neither civic education nor any instruction in biology, contemporary history or foreign language. Allowing such a schooling system to go on compromises the values of social justice for it undermines those future citizens’ fair value of political liberties and fair equality of opportunity. Yet what seems particularly troubling here is that the state actively sponsors this arrangement. The grievance of the general public is not concerned with the adequacy of the training the ultra-Orthodox community offers to its children, but rather with the fact that it uses public funds for this purpose through interest-group politics.

Conversely, a complementary case was the removal of aboriginal children from their parents by the Western Australian government in the early decades of the twentieth century. Some of the advocacy included assurances that the children were “to be trained to be ‘useful citizens’” and “that leaving them to be reared by their mothers was ‘wrong, unjust, and a disgrace to the State.’”⁴⁴ Now, concerns for social justice were far from being the primary motivation behind this and others policies dealing with the aboriginal population. Underlying those policies were deep racial and cultural prejudices as well as powerful interests of various groups involved in local politics, none of which I wish to ignore when I claim that even an argument from social justice does not lend support for this grossly interventionist policy. Haebich points out that it “contrasted markedly with the stated aims of the 1907 State Children’s Act to provide for needy

⁴⁴ Anna Haebich, *For Their Own Good: Aborigines and Government in the Southwest of Western Australia, 1900-1940* (Nedlands: University of Western Australia Press, 1988), 82, citing *Western Australia, Parliamentary Debates* 28 (1905): 425.

children without undue interference in family relationships.”⁴⁵ Indeed, the state could promote social justice by means that did not interfere *directly* with the parent–child relationship; for example, through state schooling, an option that aboriginal parents were much more willing to accept.⁴⁶ Again, the problem is less with the fact that pursuing social justice would compromise family justice, than it is with violating the integrity of the family in that pursuit.

If my analysis is right then *modus vivendi* compromises are not entirely unprincipled. Even if there is no one ‘correct’ compromise, some compromises are simply wrong. (One might say that what makes such cases wrong is precisely the fact that they are not genuine compromises; the principles of one side uncompromisingly override the principles of the other.) There are likely to be circumstances in which social justice and family justice are not (fully) compatible yet this is no reason to lose sight of their demands. Even when we have to compromise justice we can still aspire to minimize injustice. And this sets principled limits on the sort of compromises we should be aiming at – those retaining the internal logic of each relational context and its institutional integrity.

4. Family justice in the face of social injustice

The previous discussion explored the conflict that might arise in situations where society and family fully adhere to their respective principles of justice. Yet this is rarely, if ever, the case, for the conduct of many parents falls short of what justice requires, and no society is a perfectly just one. I consider in this section what justice requires of parents in the face of social injustice; and in the next, state action in pursuit of family justice.

As a starting point for our discussion, let us take the following paragraph from Blustein:

⁴⁵ *Ibid.*, 111.

⁴⁶ *Ibid.*, 67.

[T]here are important moral differences between the case where the disabilities of prospective parents are due to personal qualities (e.g., temperament or immaturity) and the case where they are due in large measure to insufficient economic resources. By preventing the poor from having children, or by imposing limits on the number of children they may have without imposing comparable limits on more affluent parents, we increase the stigma and lack of self-respect already associated with being poor, and we deny the poor equality of opportunity for parenthood on the basis of characteristics in themselves irrelevant to psychological fitness for raising children. *None of this however can justify allowing the poor to have children they cannot adequately provide for.*⁴⁷

Not all cases of poverty are instances of social (or global) injustice but Blustein's claim seems to refer to such cases as well. This may give rise to some uneasiness. Instead of aiming at minimizing the disadvantages associated with being poor, the implications of Blustein's claim are to the contrary. It furthers the disadvantages of the poor by withholding the experience of parenting from them, and this seems to increase rather than reduce injustice. Contrary to this initial impression, I argue in this section that Blustein is right. Justice may not allow people to parent children they cannot adequately provide for, even if it is by no fault of their own but due to an injustice inflicted upon them.⁴⁸ To show why this is indeed the case we need to distinguish between two relevant perspectives from which parental conduct can be viewed, namely that of society and that of the child.⁴⁹

A society that inflicts injustice on some of its citizens and thereby prevents them from meeting the demands of family justice, is not in a position, morally speaking, to criticize their conduct or to prevent them from parenting. It would say more about society than about the parents, if it approached them with a straight face, saying: 'It is wrong for you to keep parenting your children since you cannot adequately provide for

⁴⁷ Blustein, *Parents and Children*, 137; emphasis added.

⁴⁸ 'Adequately provide for' corresponds here and throughout this section to the demands set out by the principle of family justice advanced in Chapter 4.

⁴⁹ The following argument is indebted to G. A. Cohen's view that the identity of the claimant can make a difference with respect to the claim's moral force. See his "Casting the First Stone: Who Can, and Who Can't, Condemn the Terrorists?" in Anthony O'Hear (ed.), *Political Philosophy* (Cambridge: Cambridge University Press, 2006); and also *Rescuing Justice and Equality* (Cambridge, MA: Harvard University Press, 2008), Chapter 1.

them.’ To this charge, the parents could easily reply: ‘We intend no wrong; hadn’t *you* committed injustice, we could have happily provided for our children all that justice requires of us.’ Now if society chooses to ignore its crucial role in generating this wrong, we may suspect its moral appraisal of the parents to be critically insincere, an act of hypocrisy.⁵⁰ And this works primarily to undermine its own moral status, rather than the parents’.

This holds true also for society’s moral capacity to remove children from their parents. If parents cannot meet the demands of family justice due to social injustice, then a society seeking to eliminate this wrongness should treat the disease rather than its symptom. It should aim first and foremost at reducing the injustice that prevents some of its members from adequately providing for their children, thereby enhancing their capacity to parent. It cannot just take their incompetence as a given since it is because of its own injustice that they are thus incompetent.

To illustrate, consider the following argument justifying new placements for children away from their parents:

- (I) It is wrong when people parent children they cannot adequately provide for.
- (II) Certain members of this society cannot adequately provide for their children (due to social injustice).

Therefore,

- (III) It is wrong when these members parent their children.

The argument is morally troubling (although valid) when it is put forward by the same society which generates the injustice preventing adequate care. If society is interested in moral action then it cannot take the conclusion of the argument as its starting point while it is due to its own conduct that the minor premise becomes true. It should rather aim at undermining the truth of this premise by adopting policies to reduce the relevant injustice and enhance its members’ capacity to parent. When society ignores this course

⁵⁰ On hypocrisy as feigning sincerity when sincerity matters, and its corrosive effect on morality, see Eva Feder Kittay, “On Hypocrisy,” *Metaphilosophy* 13 (1982): 277-89.

of action and takes the conclusion of the argument as given, we get the sense of increased injustice pointed out above.

But all this is of much less relevance when we approach the issue from the child's perspective. From this perspective the minor premise of the above argument is indeed given, and so a child may have a claim of justice against a person who insists on parenting her despite lacking the necessary means. I say 'may have' because it is not always the case – indeed it is often not the case – that there is a better parental alternative available for the child. If the parent, given the unjust social circumstances, provides the child with what he can and there is no parental alternative available that can better provide for the child, then we cannot say an injustice is inflicted on the child *by the parent*.⁵¹ Yet there are times when others are available to better meet the demands of family justice and in these cases it *is* unjust if parents insist on keeping their children while preventing them from the possibility of reaching (or getting nearer) the threshold level of functioning. This holds even when placing the children elsewhere actually plays into the hands of the perpetrators of the initial social injustice.

To make this point more vivid, and perhaps more controversial, consider the horribly unjust situation that Jewish parents faced during the Holocaust:

[T]he closer the instruments of the 'Final Solution' drew, the more evident it became that the dangers of starvation, disease and deportation were too imminent and serious to ignore and that the chances of the children surviving if they stayed with their parents were close to nil. Acknowledging this terrible reality, some parents looked for shelters in which to place their children in an attempt to avert their otherwise inevitable fate. Often they turned to non-Jewish friends and asked them to take care of the child. At times they simply left the child – if young enough – on the doorstep of a monastery or a non-Jewish family, or sent him or her out of the ghetto with no definite address in the hope the child would find some mercy and humanity. At other times, the Gentile caretakers were approached by third parties or themselves volunteered to risk their lives and the lives of their families to shelter one or more Jewish children. Needless to say, such options of rescue were extremely rare and were available to a very limited

⁵¹ Whether a child can have a claim of justice against his procreators in cases where they could tell in advance that he would not be able to reach the threshold level of functionings, is an issue of procreative justice which falls outside the scope of this thesis.

number of Jews... For the million and a half Jewish children who perished in the Holocaust no shelter was found, no solace from suffering, no escape from cruelty and murder.⁵²

The Holocaust was an historical situation in which the social injustices of racial discrimination, persecution and then extermination prevented most parents belonging to a specific minority group in society from providing their children with conditions for decent life prospects in their own contextual terms. But some of these parents faced an alternative; to give away their children to members of other non-persecuted groups in society, and thus further the chances for their children to gain decent life prospects, albeit in contextual terms different from their own. This would imply bringing the children up according to a different faith, religion, culture, perhaps even language, and in turn would most likely shatter any substantial sense of continuity between them and their original parents. This course of action may have been regarded as indirectly collaborating with the perpetrators' aims or as 'giving up'. Nonetheless, I contend – without understating the tragedy of the parents' decision – that this is what justice required of them in such unjust circumstances. Indeed, that was part of the way they were wronged by their perpetrators and part of their tragedy.⁵³

While I argued that it would be hypocritical for an unjust society to take action against parents who cannot adequately provide for their children due to the very injustice it perpetrates, this is not pertinent to the issue of whether their children have a claim of justice against them. As we stated earlier, it is only for as long as parents do provide decent life prospects in their own contextual terms that these terms (are allowed to) matter. Parents who cannot provide decent life prospects in their own contextual terms may not legitimately sacrifice their children's interests by withholding

⁵² Daniel Statman, "Tragic Decisions: Removing Jewish Children from Their Christian Guardians in Postwar Europe," in Eva Garrard and Geoffrey Scarre (eds.), *Moral Philosophy and the Holocaust* (Aldershot: Ashgate, 2003), 169.

⁵³ Niko Kolodny, "Which Relationships Justify Partiality? The Case of Parents and Children," *Philosophy and Public Affairs* 20 (1991): 37-75, at 69: "Part of what makes many actions wrong, or aggravates their wrongness, is precisely that they unfairly burden their victims by changing their normative situation."

decent life prospects in other contextual terms even if these come into sharp conflict with their own.

The case discussed here has parallels with the Jehovah's Witnesses example from the previous chapter. In both, parents could have provided the conditions for decent life prospects in accordance with their own contextual terms had the circumstances been normal. However the actual circumstances, whether natural or social, are such that the children cannot be provided with decent life prospects which accord with their parents' contextual terms but can be provided with such prospects according to conflicting contextual terms. The causes generating these unfavourable circumstances, while very different, do not undermine the claim of justice their children may have in both cases: 'It is wrong for you to parent me if you do not adequately provide for me.' And in both cases the parents could *not* reply by saying: 'Well, I don't have any choice. The unfavourable circumstances preventing me from adequately providing for you are out of my control.' They could not respond in this way because they did in fact have a choice, namely, to let some others provide for their children. The child could rightly claim against the parent: 'You have no right to sacrifice *my* life by insisting on keeping me while not being able to adequately provide for me.'⁵⁴ It is worth stressing again that this course of action was not available to most Jewish parents during the Holocaust as they "had no non-Jewish friends or connections, or, at any rate, had no practical way of getting to them."⁵⁵ In these much more common occasions, such a claim of justice could not be made.⁵⁶

⁵⁴ I do not intend to imply that children actually made such claims against their parents or that it is likely for children to make such claims in situations like this. It is even probable that children have tried to resist such a separation and stick by their parents. Nonetheless a valid claim of justice could be made, if not by the children then on their behalf. Indeed, the actual courses of action described in the quote from Statman suggest that the Jewish parents acknowledged that claim about the limits of parenting. (Recall also the claim in Chapter 1, Section 3.A against the ability of young children to exercise genuinely altruistic choices, thereby forfeiting their claims of justice.)

⁵⁵ Statman, "Tragic Decisions," 169.

⁵⁶ Also, many situations are fraught with much more uncertainty, which would considerably qualify the claim. I am not suggesting here that justice requires parents to minimize risks *as much as possible*. It is, for example, much less obvious that justice required the Melians to surrender to Sparta, although trying to retain their freedom involved the eventual risk of their children being sold into slavery. See Thucydides,

The distinction between family justice and social justice and, more generally, between different relational contexts, is not a futile labelling game. In cases of injustice labelling them correctly will indicate the focus of the required moral action. Consider, for example, the practice of female genital cutting, which is so troubling as it threatens women's functionings of *bodily integrity* and *sense, imagination and thought* (which includes having pleasurable experiences and avoiding non-necessary pain) and may also risk the functionings of *bodily health* and *life*. Yet if Gerry Mackie's convention theory of this practice is correct, parents who perform this practice on their daughters are not necessarily committing a *family* injustice. In societies where female genital cutting is maintained as a conventional sign of marriageability, parents seem to follow this practice as part of providing the best conditions for functionings available for their daughters.⁵⁷ If this is right then treating it as family injustice misreads the situation and would probably do no good. Following Mackie, we may suggest that this case presents us with just parents (usually mothers) trying to discharge their duties towards their daughters in face of social injustice (or a bad, even if not unjust social practice). In this case, labelling this practice correctly will not only mark the target for moral condemnation but also the site for moral action, here in the form of solving a collective action problem of shifting from an existing inferior equilibrium to a superior one in which the convention is abandoned by everyone.⁵⁸

History of the Peloponnesian War, trans. Rex Werner, ed. M. I. Finley (London: Penguin, 1972), 400-8; cf. the Masada case discussed in the previous chapter.

⁵⁷ Gerry Mackie, "Female Genital Cutting: The Beginning of the End," in Bettina Shell-Duncan and Ylva Hernlund (eds.), *Female "Circumcision" in Africa: Culture, Controversy, and Change* (Boulder: Lynne Rienner, 2000), 280: "The people who practice [female genital cutting] are honorable, upright, moral people who love their children and want the best for them. That is why they practice [female genital cutting], and that is why they will decide to stop practicing it once a safe way of stopping is found." See also Mackie, "Ending Footbinding and Infibulation: A Convention Account," *American Sociological Review* 61 (1996): 999-1017.

⁵⁸ G. A. Cohen's following remarks, which did not originally refer to this particular practice, are most relevant here: "Note that one can condemn the said practice without condemning those who engage in it. For there might be a collective action problem here, which weighs heavily on poor families in particular. ... [S]ound judgments about the justice and injustice of people are much more contextual [than the judgments of practices]: they must take into account the institutions under which they live, the prevailing level of intellectual and moral development, collective action problems... and so forth. The morally best

But labelling an injustice as a social one does not exempt parents from moral responsibility. It still leaves open the complex question of how parents should react to the injustice inflicted on them and their families. I argued above that when parents cannot meet the demands of family justice and there are others available who can, the parents are not justified in keeping their children. I concede that this claim may be repugnant as it seems to further the social injustice originally inflicted, but the alternative is no better and, according to my argument, morally wrong. (As I said, it does not, in fact, further the original injustice but is another aspect of it.) If children enjoy a distinct moral status then parents cannot sacrifice them while fighting for their cause. The tragedy of their situation should not blur the constraints that justice imposes on their conduct.

5. State action in pursuit of family justice

The remaining issue to which I now turn is how a just society should act in the face of (the possibility of) family injustice. As I mentioned in the introduction to this chapter, the interplay between an unjust society and unjust families will not be discussed and so I assume throughout this section that we are concerned with a society which is just on the whole but within the purview of which instances of family injustice occasionally occur. The issue here is the policy implications of our account of family justice for the just society.

If justice is the first virtue of the family, then an unjust family must be reformed or abolished. Parental conduct must conform to the demands of justice. This is addressed, first and foremost, to the parents themselves. It does not imply that it is for the state to ensure that parental conduct entirely conforms to family justice or that every unjust family is reformed or abolished. In this section I start with a more general discussion of

slave-holder might deserve admiration. The morally best form of slavery would not" (*Rescuing Justice and Equality*, 136n, 141n).

the constraints the state faces in pursuing family justice and then move to explore some specific policies.

Three types of constraints are of specific relevance to policies concerned with family justice: epistemic, structural and principled.⁵⁹ I explain each of them in turn.

The epistemic constraint arises because it is unclear what the principle of family justice *precisely* requires. Although we can roughly tell what it requires of parents we cannot usually pinpoint the exact stage at which the demands of family justice are fully met. Recall the formulation of the principle of family justice: Justice requires parents to provide their children with the conditions to achieve a set of functionings up to the level which allows them to lead a decent life in terms of the parents' social and cultural context. In this formulation three components make it quite impossible to determine *precisely* when the principle is fully met. First, there is the concept of decent life: While in most cases we can tell with confidence whether a person enjoys decent life or not, it is extremely hard if not impossible to tell exactly where the border between life which is decent and life which is not lies. Second, we cannot specify the accurate level in which the conditions for functionings are sufficient: We can tell that some conditions are necessary but the level to which these are sufficiently provided varies from one child to another. Moreover, in borderline cases where the child's functionings are just below the threshold level we will often not be in a position to tell whether it is due to conditions not being provided or to other factors attributed to the child himself. Third, social and cultural contextual terms are (in varying degrees) open for interpretation, dispute and change. Contextual terms are neither monolithic nor static and this may make it hard to determine what they recommend (although it may be easier to determine what they do *not* recommend).

The epistemic constraint applies to the parents as well as to the state.⁶⁰ But its implications for the just parents and the just polity are opposed. The just parents will

⁵⁹ They are by no means the only ones. For example, there is (almost) always the issue of insufficient resources. But this is a constraint on policy in general. Here I limit my discussion to constraints which arise out of the specifics of pursuing family justice.

aim higher than the threshold level to make sure they fully meet the demands of justice. By contrast, the state might do far more damage than good, especially with regard to the children involved, if it mistakes a just family for an unjust one. The just polity will want to make sure it addresses actual (rather than apparent) injustice and will therefore focus its attention on parental conduct which clearly falls below the threshold level.

The second constraint is structural. We asserted in earlier chapters that part of what characterizes the family is that it forms a somewhat private sphere of intimacy. To have a state regulating and monitoring parental conduct to ensure that justice is met to the highest possible extent, would inevitably transfigure the family as we know and value it.⁶¹ Society therefore needs to find some balance between the enforcement of family justice and the privacy and intimacy of the family. We can think of this again in terms of the integration and separation of family and state. Since what justice requires of the state and of parents with respect to children is to some extent integrated, the polity has a responsibility to enforce family justice. Yet the demands of family justice arise from the specifics of the parent–child relationship and are not initially tailored to state enforcement.⁶² So it should not come as a surprise that the state is unable to fully enforce family justice without transforming the family in the process.

⁶⁰ In terms of the third aspect, the state faces a further, more basic obstacle, namely to identify the parents' context. What is referred to as a context from the outside (e.g. the ultra-Orthodox Jewish community in Israel, the Australian Aborigines) may, in fact, group together many smaller (sub)contexts while ignoring important differences in their terms. Similar difficulties arise when the parents come from different contexts, simultaneously belong to more than one context, or move between contexts.

⁶¹ Cf. Cohen, *Rescuing Justice and Equality*, 353-4: "[I]t is certainly not always regrettable that the amount of contribution that should be expected from a person defies nice measurement. Sometimes it would be a nightmare if we could measure precisely, because we might then be tempted to do so, in the interest of justice, and that would make life a nightmare... And even when justice *can* be stated precisely, it is often wise to forgo that statement of it... justice can bow to other considerations..." I agree with the quote as it stands here but a disagreement is also worth highlighting. Cohen thinks that justice can bow to other considerations within the context in which it applies (see his example of buying rounds of drinks at 354). My point is not about justice bowing to other considerations *within the family*, but about *state enforcement* of family justice bowing to other considerations. The view of justice as the first virtue of the family allows only for the latter while Cohen's view, which does not regard justice (in general) as a first virtue, allows for both.

⁶² Recall, for example, the discussion of the requirement of publicity and its bearings on the metrics of family and social justice in Chapter 4, Section 6.B.

The separation of family and state also accounts for the third, principled constraint. As we saw in Section 3, some of the demands stemming from family and citizenship may not be compatible. I argued that in such cases it is wrong to use the distributive mechanism of one relational context to promote the conflicting demands of another, thereby turning the mechanisms of the original context against itself. It would violate the state's institutional integrity if we used its mechanisms to pursue demands of family justice that conflict with social justice.⁶³ So even where the two previous constraints do not hold, we may still have a principled reason not to enforce some of the demands of family justice.

The three constraints work together to narrow the scope of state action in pursuit of family justice and focus the state's attention on only a subset of demands of family justice. However, it would be misleading to characterize the failure to meet this subset's demands as constituting abuse and neglect. This is because not meeting the principle of family justice with respect to *any* of its demands harms the child by depriving him of or not providing him with what he needs, and may thus be regarded as abuse or neglect.

Alternatively, it may be better to think of this subset as being the *core* demands of family justice. Not meeting them brings down the child's functioning substantially below the threshold level and thus *significantly* harms the child.⁶⁴ Focusing on such demands is recommended by the first two aspects of the epistemic constraint and by the structural constraint. But granting that harm, albeit significant, may still be specific to a particular cultural context (e.g. not meeting some necessary requirements for securing the child's affiliation with his cultural community), the state should focus only on the demands that are (likely to be) *common* to the different cultural contexts across society.⁶⁵ This is recommended by the third aspect of the epistemic constraint as well as by the principled constraint. Thus, the relevant subset of demands can be regarded as the core

⁶³ Sending the ultra-Orthodox Jewish boy to *yeshiva* might be a demand of family justice but the state should not enforce it by *insisting* on exempting him from the social burden of military service.

⁶⁴ This corresponds to the Children Act 1989, Section 31(2), which sets the threshold level of court intervention in the UK as that of suffering or being likely to suffer significant harm.

⁶⁵ Thus, the subset of core demands may vary from one society to the next, depending on their cultural composition and level of diversity.

of family justice since not meeting it commonly constitutes significant harm. The core demands will include those concerned with basic developmental needs – physical, emotional and cognitive – as well as the prevention of child sexual abuse. (Notwithstanding my reservation in the previous paragraph, in the rest of this section I narrowly employ the terms ‘abuse’, ‘neglect’, and ‘child maltreatment’ to refer to the violation of such demands.) Thus the subset of core demands is likely to be substantially narrower than the original set, yet this does not make its pursuit any less crucial.⁶⁶

With these general considerations in mind, I would now like to explore some specific policies in pursuit of family justice. My focus here is on policies that *directly* pursue family justice but let me first say something about the *indirect* effect policies may have on family justice. Child maltreatment is commonly approached as having neither a single cause nor any sufficient or necessary causes.⁶⁷ Nonetheless, there is a particularly close association between child maltreatment, especially neglect, and deprivation: “[P]overty and community disadvantage are the most consistent and strongest statistical predictors of having an open child protection case and particularly

⁶⁶ Some may doubt whether the subset of core demands is not an empty set. For a demonstration that it is not, consider the gruesome story of Victoria Climbié, detailed in Lord Laming, *The Victoria Climbié Inquiry Report* (London: The Stationery Office, 2003). Victoria was eight years old when she died in early 2000 of severe abuse and neglect by her primary ‘caregiver’, Victoria’s great-aunt, and her partner. Her cause of death was hypothermia, which had arisen in the context of malnourishment, a damp environment and restricted movement. This included “living and sleeping in a bath in an unheated bathroom, bound hand and foot in a bin bag, lying in her own urine and faeces” (ibid., 1). When she was admitted to hospital for the last time a day before she died, her temperature was too low to be recorded on the hospital’s standard thermometer. She had 128 separate injuries on her body caused by daily beating with a range of sharp and blunt instruments including a shoe, a coathanger, a wooden cooking spoon, a hammer and a bicycle chain. Victoria was a black child who was murdered in London by her two black ‘carers’. It was a case clearly falling within the core demands of family justice. Surely there were no principled constraints on state action in this case but nor were there any special epistemic or structural constraints. The neglect, which later turned to the severe abuse described above, could not reasonably be interpreted as a matter of context and Victoria was known to no less than three housing authorities, four social services departments, two of the police’s child protection teams, a specialist centre managed by the National Society for the Prevention of Cruelty to Children (NSPCC), and two different hospitals (to which she was admitted because of suspected deliberate harm). Evidently, there were twelve key occasions when the relevant services had the opportunity to successfully intervene in Victoria’s life, not one of which “required great skill or would have made heavy demands on time to take some form of action” (ibid., 3). It was simply and horribly a case of malpractice. Sadly there are many stories, like Victoria’s, which could be identified and addressed quite easily through the core demands of family justice.

⁶⁷ For a helpful overview of the different causation theories, see Brian Corby, *Child Abuse: Towards a Knowledge Base*, second edition (Buckingham: Open University Press, 2000), Chapter 8.

of having a child placed in out-of-home care.”⁶⁸ More specifically, it has been consistently found that low-income and poor families have increased probabilities of actual child maltreatment.⁶⁹ It is important to bear this in mind when we consider the constraints and difficulties the state faces in *directly* pursuing family justice. Generous welfare policies, albeit not directly motivated to pursue family justice, seem to have the potential to reduce the risk of child maltreatment. If this is indeed the case then our concern with family justice lends support to such policies.

In light of the crucial impact family (in)justice has on children’s lives, we need to consider possible policies that aim to pursue family justice *ex ante*, that is, before family injustice occurs. One often-mentioned policy of this sort is that of *parenting classes*. Matthew Liao’s suggestion seems particularly relevant here as his parenting education scheme is “about helping one to acquire the knowledge and skills to be able to carry out the task of helping a child to become an adequately functioning individual.”⁷⁰ The scheme would be focused on the basic scientific knowledge about child development and refrain from teaching “more value-laden types of parenting skills such as empathy and caring.”⁷¹ It would thus provide a ‘non-comprehensive’ scheme that allows for pluralism in parenting. Mandating such a scheme in schools, Liao argues, would provide the knowledge necessary for good parenting *before* abuse and neglect take place.

Offering parenting classes based on curricula of this sort can promote family justice to some extent. We may doubt, however, whether they should target high-school students and whether the classes should be mandatory. It is true that if addressed to high-school students, such classes are most likely to precede child maltreatment. But they are also least likely to be effective, for most high-school students are still experiencing their own childhood and the prospects of parenting seem

⁶⁸ Lawrence M. Berger and Jane Waldfogel, “Economic Determinants and Consequences of Child Maltreatment,” *OECD Social, Employment, and Migration Working Papers* 111 (2011), 11 (<http://dx.doi.org/10.1787/5kgf09zj7h9t-en>).

⁶⁹ *Ibid.*

⁷⁰ S. Matthew Liao, “The Right of Children to Be Loved,” *Journal of Political Philosophy* 14 (2006): 420-40, at 436.

⁷¹ *Ibid.*, 437.

too distant. My point is not that adolescents cannot be interested in issues concerning parenting; surely some of them are. It is that in order to be effective such classes need to have a practical rather than an academic nature and relate to an actual (or anticipated) experience of parenting. Such a format can be a source of basic information and support for many parents in much the same way that antenatal classes are for many pregnant couples, and we certainly need not wait until parents become abusive or neglectful to offer them such classes. But I am sceptical that parenting education can remain effective if detached from actual parenting. I also doubt whether making such classes mandatory would pursue family justice more effectively. As I said, parenting classes may serve for some as a good source of basic information and support. Others will turn to alternative sources such as family members, friends, services run by their community, internet forums and guidebooks. But it seems right to point out that “child maltreatment is usually not an intellectual mistake.”⁷² Those most at risk of becoming unjust parents – due to, say, apathy, social isolation or lack of responsibility – are also likely not to be affected by these (mandatory) classes.⁷³

Following from this, some have suggested a policy of *licensing parents*. In its limited form, we would set minimal requirements for a licence, then create incentives for people to seek it – say, in the form of a tax credit – rather than punish those without it.⁷⁴ This is meant to actively encourage people to improve their knowledge and skills before becoming parents. However, as this programme ultimately leaves the getting of a licence to the discretion of parents, some of whom may not be affected by the incentives offered, it still risks allowing severe abuse and neglect to happen. More interesting is the rigorous version of that policy. It builds on the idea that while we cannot give accurate criteria for being a good parent, we should aim at designing a test to identify “the prospectively very worst parents, those extremely likely to abuse or

⁷² Michael T. McFall, *Licensing Parents: Family, State, and Child Maltreatment* (Lanham: Lexington, 2009), 124.

⁷³ This is also suggested by the empirical evidence cited in Berger and Waldfogel, “Economic Determinants and Consequences,” 17-18.

⁷⁴ See Hugh LaFollette, “Licensing Parents Revisited,” *Journal of Applied Philosophy* 27 (2010): 327-43, at 338-40.

neglect their children.”⁷⁵ Such persons will be legally prohibited from parenting and if a child is born to them, the child will be put up for adoption. It seems that a theoretical case in favour of such a policy can be made. Family justice does not allow people to parent children for whom they do not adequately provide. If we can identify those people in advance, we may be justified in not allowing them to parent in light of the foreseeable significant harm to their children. Moreover, the costs of running a licensing system are not necessarily higher than those incurred by society in dealing with actual child maltreatment and the long-term effects it has.⁷⁶

However, the implementation of the policy faces great feasibility problems.

It is unclear how many people would not bear children simply because they did not possess a license... many people might evade the law and rear children without licenses. Penalizing such parents would negatively affect their children, the children that need help in the first place... Ultimately, some prospective parents might seek to evade the system by having their child outside a hospital. This not only poses a danger to the health of women who give birth in such situations, but it also poses a health risk to children. These families would thereafter have to evade the detection of the state.⁷⁷

This leads Michael McFall to conclude that the only way we could effectively implement a licensing policy is through a system of universal reversible sterilization.

With such technology, though not available yet, all children (male and female) would be sterilized at birth. When such children grow up and wish to have children, if they received a license to parent, they would be provided with the reverse sterilization procedure.⁷⁸

For most people this will conclude the matter. If universal sterilization is what it takes to effectively implement it, then surely we should forsake the idea of licensing parents. McFall anticipates this reaction and argues that considering the reversibility of the

⁷⁵ McFall, *Licensing Parents*, 119. As components of the comprehensive testing process, McFall mentions tests such as the Child Abuse Potential Inventory and the Family Stress Checklist.

⁷⁶ For the long-term consequences for the children involved, see Berger and Waldfogel, “Economic Determinants and Consequences,” 14-16. For the costs to society, see McFall, *Licensing Parents*, 110-11, 129.

⁷⁷ McFall, *Licensing Parents*, 121-2.

⁷⁸ *Ibid.*, 122.

procedure and the similarities with a constitutionally permissible case of coerced vaccination, we should nonetheless take it seriously.⁷⁹ I do not find his argument convincing, primarily because it fails to address the risk of the state misusing its power. (Think of the unbearable ease with which genocide could be executed.) But what is perhaps most important is that even such an extreme precaution cannot suffice since, as David Archard rightly points out, “a licenser of parents would have to be assured that even licensed parents were still fit to care for their children.”⁸⁰ As much as those who were once found unfit to parent could retake the test and qualify – a possibility the advocates of licensing allow – those with a licence could later become incompetent. To illustrate, one of the conditions for a licence according to McFall is not having an illness or disability that would reasonably endanger a child. But one might become ill or disabled *after* obtaining the licence. A universal licensing scheme does not take away the need for monitoring actual parenting.

What may we conclude from all this? First, while universal licensing does not seem a viable policy we may still want to consider *selective* licensing. Even without testing all prospective parents, society is likely to be aware of potential highest-risk parents, such as those with past convictions of sexual assault, rape or specifically child-related offences. It may be justified to not allow people falling under this category to parent, or at least shift the burden of proof so it is up to them to disprove society’s concerns by, say, signing up for a comprehensive testing process of the sort McFall suggests and an extensive monitoring scheme once approved. This brings us to the second point, which concerns the general necessity of *some* monitoring of parenting. Indeed, not only is it required for detecting family injustice but may effectively prevent it from occurring in the first place by offering supportive care and watching for potential problems. For example, the Nurse Family Partnership (NFP) scheme, which provides long-term in-home support and services by trained nurses to first-time young mothers, has been

⁷⁹ *Ibid.*, 171, 178-81.

⁸⁰ David Archard, *Children: Rights and Childhood*, second edition (London: Routledge, 2004), 190.

found, remarkably, to reduce subsequent maltreatment by up to 50 per cent.⁸¹ *Home-visiting* programmes such as this may be a most effective way to pursue family justice *ex ante*.

Unfortunately, not all instances of family injustice can be prevented beforehand. How then should the state pursue family justice *ex post*? We declared that unjust families must be reformed or abolished and that with respect to families which fail to meet the core demands of justice this is also the business of the state. But we also saw that the state cannot simply step into the parents' shoes since epistemic, structural and principled constraints prevent it from meeting the *full* demands of family justice. This tells in favour of giving priority to (some ways of) reforming the family rather than (completely) abolishing it; to pursuing family justice through mechanisms internal to the family and its context rather than external to them. Here I want to present two practised policies that are compatible with this line of reasoning. They both give a key role to the extended family in pursuing family justice; the first, in the decision-making process, the second, as providers of alternative placement for the child.

Family group conferencing (FGC) is a practice that develops a plan for the care and protection of children through a meeting of the children's extended family, which may include relatives as well as fictive kin. The referral to FGC is usually done by a social worker, but an independent coordinator prepares the conference together with the family. The FGC itself consists of three main stages. First, service providers share information with the family about their concerns and the services they can offer. Then the family meets privately to develop its plan regarding the care and protection of the child. Finally, the family, service providers and the coordinator meet again and the plan is formally approved.⁸² FGC originally developed in New Zealand to meet concerns of

⁸¹ See Berger and Waldfogel, "Economic Determinants and Consequences," 16-17. As the authors indicate, such effective programmes are also likely to pass a cost-benefit test. For a review of the NFP and eight other home-visiting programmes, see Kimberly S. Howard and Jeanne Brooks-Gunn, "The Role of Home-Visiting Programs in Preventing Child Abuse and Neglect," *The Future of Children* 19 (2009): 119-46.

⁸² For a detailed description of FGC structure, see Kelly Browe Olson, "Family Group Conferencing and Child Protection Mediation: Essential Tools for Prioritizing Family Engagement in Child Welfare Cases," *Family Court Review* 47 (2009): 53-68.

the indigenous Maori population about the child welfare system's disregard of Maori children's cultural and family context.

Rather than marginalising the family circle's expertise, the conferencing philosophy acknowledges that the family circle's experience and input is critical if an effective plan is to be developed for the child's future... it is affirmed that cultural knowledge is amongst the knowledges families bring to the table.⁸³

Now being practised also in other Anglo-American and European countries, FGC is regarded as capable of generating "culturally competent, contextual and appropriate responses to the family crises."⁸⁴

This approach may not be applicable to all families. For example, it seems to assume an extended family the members of which all share the same history and culture, as in the case of Maori hapu community. In less communitarian contexts, however, the extended family may itself be divided about the values and traditions that should shape the care plan for the child. More prosaic interpersonal tensions and rivalries if present may also undermine the potential effectiveness of such an approach. So holding FGC *automatically* once child protection concerns have been identified might not be an adequate requirement.⁸⁵ There are also concerns about whether the operation of FGC releases the state from its own responsibility towards the well-being of children. If families and wider communities are not provided with the necessary support and resources, FGC may increase the burden being shouldered by families and their wider communities and further disadvantage the children in their care. Notwithstanding these important issues, FGC, if adequately operated, does have the potential to somewhat bridge the divide between family and state.

⁸³ Jeanette Elizabeth Schmid and Shoshana Pollack, "Developing Shared Knowledge: Family Group Conferencing as a Means of Negotiating Power in Child Welfare System," *Practice: Social Work in Action* 21 (2009): 175-88, at 179.

⁸⁴ Olson, "Family Group Conferencing," 66.

⁸⁵ In New Zealand such a requirement follows from the Children, Young Persons, and Their Families Act 1989, Section 5, which states that "wherever possible, a child's or young person's family, whanau, hapu, iwi and family group should participate in the making of decisions affecting that child"; cited in Carol Lupton and Paul Nixon, *Empowering Practice?: A Critical Appraisal of the Family Group Conference Approach* (Bristol: Policy Press, 1999), 62.

The second policy is to give priority, where alternative placement for children is required, to *kinship placement*.⁸⁶ The working assumption underlying this policy is that placing a child with members of her extended family or social network is an important alternative route to providing “a sense of security, continuity, commitment and identity” when the birth family fails to do so.⁸⁷ More specifically, it is valued as giving the children a sense of belonging and enabling children “to develop their identity within a context of a known history, particularly important where a placement needed to be culturally and religiously appropriate.”⁸⁸ This is not to say that kinship care always offers the best alternative placement for children. Indeed it may involve quite distinctive challenges. Kinship carers are more likely than non-kin foster carers to face difficulties in setting clear boundaries with biological parents in cases of child risk. Moreover, they are not trained beforehand, as non-kin foster carers are, to handle the heightened care needs of maltreated children. Managing financially is another major issue for many kinship carers, who usually did not expect to find themselves in this role. This is exacerbated by the legal assumption that kin are both naturally inclined and morally obliged to assume such care, which appears to result in children being placed with kin receiving less support, fewer services and being monitored less closely by agency staff.⁸⁹ Also, kinship carers tend to be older on average than non-kin foster carers – in the US more than half of kinship carers are older than 50, half of all kinship placements being with maternal grandmother and up to a third with aunts – and are more likely to suffer from health issues.⁹⁰ The upshot of all this is “a not insubstantial minority [of kinship placements] which raise serious quality issues.”⁹¹

⁸⁶ As in the UK Children Act 1989, Section 22C.

⁸⁷ Department for Education (UK), *Family and Friends Care: Statutory Guidance for Local Authorities* (London: Department for Education, 2010), Section 4.5.

⁸⁸ Joan Hunt *et al.*, *Keeping Them in the Family: Outcomes for Children Placed in Kinship Care Through Care Proceedings* (London: British Association for Adoption and Fostering, 2008), 115.

⁸⁹ Sandra T. Azar and Lisa K. Hill, “Adoption, Foster Care, and Guardianship in Minority Families,” in Katarina Wegar (ed.), *Adoptive Families in a Diverse Society* (New Brunswick, NJ: Rutgers University Press, 2006), 193-4, 195-6.

⁹⁰ *Ibid.*, 194. See also Hunt *et al.*, *Keeping Them in the Family*, 25.

⁹¹ Hunt *et al.*, *Keeping Them in the Family*, 37.

The policy of giving priority to kinship placements should not ignore these concerns. But where a good-enough kinship placement is available it has the potential to overcome the constraints imposed on the state and its agents thereby minimizing the loss the child incurred when removed from his parents. This recommends placing the child as close to his family context as is possible without compromising the core demands of justice. While “placement with relatives is among the oldest traditions in child rearing,” Rebecca Hegar observes, it is “the newest phenomena in formal child placement practice.”⁹² Indeed, it stands in stark contrast to some early- and mid-twentieth-century policies of removing children not only from their families but away from their cultural and even social context. Most (in)famous are the removal of Australian Aboriginal children of mixed descent from their families to be raised in white-run institutions (the ‘Stolen Generation’), and the migration scheme of sending poor or orphaned children from the UK to former British colonies (the ‘Home Children’).

The last policy implication I wish to address before concluding concerns the *child’s right to exit* the parent–child relationship. Here I am referring to the right to exit not a malfunctioning relationship of the sort I have been discussing to this point, but a relationship that may fully satisfy the demands of family justice. This right to exit is a thorny issue, since it is relevant only during a limited period between childhood and adulthood. Young children, that is, do not have such a right. My baby girl is not entitled to exit her relationship with me even if she is strongly displeased with the sleep-training programme I am trying to follow. And when children reach the formal age of maturity, from the state’s perspective they automatically exit the relationship and parental authority ceases to have legal effect. But adulthood is not all-or-nothing, and so we may have to recognize the right of sufficiently competent children to exit the relationship with their parents.

This may become particularly relevant where children do not come to conform to their parents’ contextual terms. Examples may include gay children of homophobic parents, children of devotedly religious parents who become secular, and those not

⁹² Cited in Azar and Hill, “Adoption, Foster Care, and Guardianship,” 191.

willing to comply with traditional practices such as arranged marriage. In most cases it would surely be better for children and parents if they could negotiate their terms, so to speak, and come up with a way of maintaining their relationship. Such is the pattern of *hijab*-wearing of young Muslim girls in France who do so at their parents' insistence but thereby buy the freedom to go out by themselves, attend college or continue their education.⁹³ But at times this might be too painful or not really possible. These are not necessarily cases of unjust parents. They may be more than willing to provide their children with decent life prospects according to their own contextual terms, but cannot conscientiously deviate from them.⁹⁴ Still, they are not allowed to prevent their (competent) children from exiting and it should be the state's policy to enforce this.⁹⁵

Three points are in order here. First, in accordance with our principle of family justice this should be interpreted primarily as enforcing the *negative* right children have to exit the relationship with their parents. Parents are *not* required by this principle to ensure that exiting is a viable option. If society wants to make it more viable – say, by making the children aware of that option beforehand or by allowing them access to public funds after they exit – then it is not as part of pursuing family justice but from the perspective of citizenship that it does so. To the extent that this may conflict with the family perspective, this issue falls within the scope of the earlier discussion of the formula of separation.

Second, for most exiting children the state will still be required to arrange some alternative placement. After all, in order for the right to exit to make sense, children need to have somewhere to exit to. Notice however that our recommended policy of placing the child as close to his family context as possible is not likely to work if the exit is motivated by contextual (rather than interpersonal) incompatibility. Well-run

⁹³ This issue is raised in a study by Françoise Gaspard and Farhard Khosrokhavar, cited in Anne Phillips, *Multiculturalism Without Culture* (Princeton, NJ: Princeton University Press, 2007), 117-18.

⁹⁴ As I said in Chapter 3, some features may be so constitutive of a parent's identity that a successful parent-child relationship could not be sustained without sharing these features with one's child.

⁹⁵ Indeed, this has been a major focus of UK initiatives regarding forced marriage; see Anne Phillips and Moira Dustin, "UK Initiatives on Forced Marriage: Regulation, Dialogue and Exit," *Political Studies* 52 (2004): 531-51.

children's homes might offer a reasonable solution here.⁹⁶ Alternatively, the state could direct children to voluntary organizations which may offer placement better-tailored to address their particular situation.

Third, all this is not to underplay the fact that exiting is still likely to be an extremely costly choice for children, especially emotionally.⁹⁷ Presumably parents desire their children to comply with their terms, not to cut off their relationship. So making exit more real an option might motivate them to become more flexible in setting the terms. But it might also have the opposite effect where parents' terms become even more rigid in an attempt to counter the reduced costs of exit. Ending a parent-child relationship involves great loss for both sides, particularly for the child. Enforcing the child's right to exit does not deny this. Yet it does indicate scepticism as to whether coercing parents to accommodate a dissenting child is a justifiable – and if so, a more promising – route to follow.

6. Conclusion

The principle of family justice gives rise to a complex interplay between family and state. Children grow into citizens yet they are not primarily brought up as such by their families. Thus we are faced at the same time with formulae of both integration and separation of family and polity. Conceptually the demands of justice stemming from family and citizenship are complementary as well as competing. The relative strength of these opposite formulae is determined by the actual circumstances. In Rousseau's Sparta it was the formula of integration that enjoyed nearly absolute primacy. In the case of illiberal minority groups within liberal societies it is the formula of separation

⁹⁶ For a level-headed proposal for creating group living arrangements for children, see Laura M. Purdy, "Boundaries of Authority: Should Children Be Able to Divorce their Parents?" in Uma Narayan and Julia J. Bartkowiak (eds.), *Having and Raising Children: Unconventional Families, Hard Choices, and the Social Good* (University Park, PA: Pennsylvania State University Press, 1999).

⁹⁷ See also Phillips, *Multiculturalism Without Culture*, Chapter 5.

which quite dramatically comes to the fore. When circumstances do give rise to conflict between the two perspectives, the compromise of justice is inevitable. Yet we can still minimize injustice if we respect the internal logic of each relational context and the institutional integrity of its distributive mechanisms.

Since the family is both separated from and integrated in the polity, social injustice does not necessarily entail family injustice although it might have detrimental effects on family life. On the other hand, a just society has responsibility for taking action against family injustice. Despite significant limits for social action in this respect, a just society retains a crucial role in furthering the prospects of children to lead and enjoy decent lives.

Conclusion

Liberalism and the Family

In all governments, there is a perpetual intestine struggle, open or secret, between AUTHORITY and LIBERTY; and neither of them can ever absolutely prevail in the contest... [I]t must be owned, that liberty is the perfection of civil society; but still authority must be acknowledged essential to its very existence: and in those contests, which so often take place between the one and the other, the latter may, on that account, challenge the preference. Unless perhaps one may say (and it may be said with some reason) that a circumstance, which is essential to the existence of civil society, must always support itself, and needs be guarded with less jealousy, than one that contributes only to its perfection, which the indolence of men is so apt to neglect, or their ignorance to overlook.

(David Hume)¹

The main aim of this thesis was to provide an account of what parents owe their children as a matter of justice. There is no shortage in the literature dealing with either justice or parenthood, yet discussion of the one in light of the other is quite rare. We do not tend to think of parenting primarily in terms of justice. Neither do we hurry to examine theories of justice by way of their implications for parenting. It is at this juncture that the thesis attempts to make its own particular contribution: to better our understanding of justice through the prism of parenthood, and our understanding of parenthood through the prism of justice.

Asking about justice in the family gave rise to the more fundamental question of how we should think about justice. This work offered some support for the view that this is best done contextually. I argued that neither starting with children as abstract recipients nor with the family as part of society's basic institutional structure, coheres with the way we normally think about the parent-child relationship and about the obligations attached to it. Rather than deriving the demands of justice from a

¹ David Hume, "Of the Origin of Government," in his *Political Essays*, ed. Knud Haakonssen (Cambridge: Cambridge University Press, 1994), 23.

perspective external to the relationship, it seemed more promising to try to formulate an account of justice in terms of the relationship's characteristic features.

Pursuing a contextualist approach to justice required an account of the parent–child relationship. The view advanced was that it is an intimate fiduciary relationship distinctively characterized by its element of identity, a sense of interconnectedness and continuity generated through the transmission of beliefs, practices and more idiosyncratic features from parent to child. A conception of family justice will have to incorporate this feature. Applying this understanding of the parent–child context to the prevalent alternative patterns and metrics of distributive justice has led to the following principle: parents are required to provide their children with the conditions to achieve a set of functionings up to the level which allows them to lead a decent life in terms of the parents' social and cultural context.

Yet this account of justice in the family is expected to leave many dissatisfied. Some will hold that it compromises children's individuality and autonomy, while others will be concerned by its undermining effect on the social ideal of equality. Both camps are likely to think the principle grants parents too much leeway vis-à-vis either their children or the wider society. Indeed, they may turn away from the contextualist approach altogether, reasserting children's abstract entitlements or society's political goals. If this is the principle of justice corresponding to our understanding of the family, they will say, then we are better to revise that understanding and thereby make it more politically focused or, alternatively, autonomy-oriented.

To conclude this work, I want to deepen the link between the family as the primary site of upbringing and my account of justice in the family by reflecting on two models of upbringing *alternative* to the family. This serves to suggest that implicitly assuming one of these alternative models may be the source of potential dissatisfaction with the account offered. It might be the case that those unhappy with the account are expecting the family to produce outcomes it is not, in fact, suitable for. We may nonetheless have good reason to favour the family over the alternative models. The closing section, interpreting the family as a particularly liberal model of upbringing,

suggests that it reflects the tension between the individual and society rather than trying to resolve it in favour of either side.

1. Two alternative models

We may deepen our understanding of the family and our normative expectations of it by reflecting on what the family is *not* good for. Drawing on Plato and Rousseau we can construct two theoretical models of upbringing alternative to the family. The construction of the models by no means captures the full range of the thinkers' arguments. They are rather meant to absorb certain elements present in their theories to illuminate, by way of contrast, our understanding of the family.

A. Plato's guardians: Politically-focused upbringing

Plato's model is very familiar. It is a crucial component of the communal life prescribed for the guardians, the ruling elite in the imagined perfectly just city. What underlies this way of life is a concern with the guardians' allegiance. "When shepherds are breeding dogs as protectors of their flocks, the worst possible disaster and disgrace," Plato tells us, is when the dogs "try to attack the sheep themselves, and start behaving like wolves instead of dogs."² By analogy, we must take all necessary measures against the possibility of the guardians turning against society.

One such measure according to Plato must be the abolition of private property, for

[o]nce they start acquiring their own land, houses, and money, they will have become householders and farmers instead of guardians. From being the allies of

² Plato, *The Republic*, trans. Tom Griffith, ed. G. R. F. Ferrari (Cambridge: Cambridge University Press, 2000), 109.

the other citizens they will turn into hostile masters. They will spend their whole lives hating and being hated, plotting and being plotted against.³

Private property, according to Plato, creates private ends and private ends are bound to conflict. Thus to secure peace among the guardians and between them and the rest of society private property must be prohibited. “In this way they will be kept safe, and they will keep the city safe.”⁴

However, the abolition of private property, while necessary, is not a sufficient condition for securing the guardians’ allegiance to the city. For even if the guardians are not divided into different households but live communally, they may still establish family ties – get married, have children – thereby allowing partiality of interests to re-emerge. Aiming at undivided loyalty of the guardians and uncompromised allegiance to the city thus leads Plato to the following logical conclusions: “That all these women shall be wives in common for all these men. That none of them shall live as individuals with any of the men. That children in turn shall belong to all of them. That no parent shall know its own child, no child its own parent.”⁵ The abolition of the private family is also required.

The upbringing that results is a strictly collective one. The children are to be removed from their parents “by the officials responsible” and “transferred to the nursing-pen, where there will be special nurses living separately, in a special part of the city.”⁶ From this moment on, any traces of kinship are to be concealed. Although mothers will be allowed into the nursing-pen for the purpose of breastfeeding, the officers, “using every means they can think of,” are to “prevent any of them recognizing her own child.”⁷ Thus, the community of the guardians is to become one big – and, Plato argues, also happy – family. “When a man takes part in a marriage, he will regard as his children all those born in the tenth – or indeed the seventh – month from the day of the

³ Ibid., 110.

⁴ Ibid.

⁵ Ibid., 154-5.

⁶ Ibid., 158.

⁷ Ibid.

festival.”⁸ He will call them his sons and daughters while they all call him father and those roughly the same age as their own, brothers and sisters. As all come to regard themselves as related, anything that happens to one of them is taken to affect all the others. Be it pleasure or pain, success or failure, the guardians “hold one and the same thing – which they will call ‘mine’ – in common.”⁹

This model of upbringing is one of ultimate socialization. Strictly speaking, it was meant by Plato to apply only to society’s ruling class, but we can imagine a state applying it to the entire citizenry. The desired outcome of such a model is undivided loyalty and uncompromised compliance with the polity’s demands thereby creating the ultimate citizens for the perfectly just polity. Rather than denying the distinctive characteristic of the family – the element of identity – this is achieved through its extension to encompass all fellow citizens. Now all are equally interconnected sharing the same sense of continuity between each and all others. To establish a Callipolis, the private family is thus abolished.

B. Rousseau’s *Emile*: Autonomy-oriented upbringing

“Do you want to get an idea of public education? Read Plato’s *Republic*,” Rousseau tells his reader.¹⁰ In contrast to this politically-focused model is the one Rousseau offers in his *Emile*. The latter is an “individual and domestic” form of instruction, an “education of nature” concerned with making a natural man.¹¹ This seems self-contradictory. How can one *make* something natural? How can something be an artefact yet retain its naturalness? However, the setting of the upbringing is not the state of nature but modern society and therefore much must be done “to prevent anything from being

⁸ *Ibid.*, 160.

⁹ *Ibid.*, 163.

¹⁰ Jean-Jacques Rousseau, *Emile or On Education*, trans. and ed. Allan Bloom (New York: Basic Books, 1979), 40.

¹¹ *Ibid.*, 40-1.

done.”¹² Since “all our wisdom consists in servile prejudices” and “all our practices are only subjection, impediment and constraint,”¹³ the education of nature must involve constant manipulation of the child’s immediate environment shielding him from society’s pervasive influence. The aim is to bring up a self-sufficient individual who chooses and lives for himself, unconstrained by habit, uncorrupted by opinion. It is thus an upbringing oriented towards autonomy.

To this purpose the upbringing must be as far as possible independent of society, with the child considered an “abstract man,”¹⁴ disregarding all his background contingencies. Hence it is far from being a mere coincidence that the first – and, for a substantial period of time, the only – book Emile will be reading is *Robinson Crusoe*. Crusoe’s solitary life on a desert island remains the ideal even when Emile becomes a member of society. “[I]t is on the basis of this very state that he ought to appraise all the others,” for putting oneself “in the place of an isolated man” is “the surest means of raising oneself above prejudices and ordering one’s judgments about the true relations of things.”¹⁵

Who should be in charge of upbringing according to this model? Here Rousseau seems unable to offer a clear-cut answer. On the one hand, he explicitly states that it should be the task of parents. From the outset Rousseau addresses himself to the “tender and foresighted mother,” maintains that “the true nurse is the mother, the true preceptor is the father,” and reasserts that “to make a man, one must be either a father or more than a man oneself.”¹⁶ This is linked to his more general view of the family being indispensable for fostering altruistic feelings, thereby serving as the cornerstone of society.¹⁷ Nonetheless, Rousseau chooses as his model’s paradigm the upbringing of

¹² Ibid., 41.

¹³ Ibid., 43.

¹⁴ Ibid., 42.

¹⁵ Ibid., 185.

¹⁶ Ibid., 37, 48, 49-50.

¹⁷ See, for example, *ibid.*, 46 and 362-3, where this is a point of criticism against Plato’s model. See also *ibid.*, 22-5, for Allan Bloom’s introductory remarks on Rousseau’s account of family life; and Susan Moller Okin, *Women in Western Political Thought* (Princeton, NJ: Princeton University Press, 1979), Part 3, for a devastating feminist critique thereof.

an orphan by a tutor,¹⁸ and there are some good reasons to favour this choice. First, in Rousseau's account "education becomes an art" requiring one "to direct the speeches and the deeds of all those surrounding a child."¹⁹ This is beyond anyone's full control yet it seems much more likely that a skilful master will come closer to its achievement than would an ordinary parent. The problem is not solved by Rousseau's insistence that "zeal will make up for talent better than talent for zeal,"²⁰ for now absolute devotion is also required. "The same man," Rousseau says, "can only give one education."²¹ Yet if the upbringing takes place in a family, the attention of parents cannot all be given to one child. At least one parent will have to work to provide for the family, and in the case of there being more than one child then undivided attention simply becomes impossible. This consideration again favours tutors over parents. Furthermore, Rousseau points out that "to be well led the child should only follow a single guide."²² This follows quite naturally from having a single tutor whereas it requires full coordination from parents if performed in the family. Lastly, the family – characterized by interdependence – is unlikely to provide the most suitable site for bringing up independent, self-sufficient individuals. As Blustein observes, "in the family, dependency is, if anything, more difficult to overcome than in the one-to-one tutor–pupil relationship."²³ We may conclude then that Rousseau's ideal of family life does not square with his model of upbringing as described in *Emile*, a fact of which Rousseau was probably well aware when he chose to present the model through a relationship of tutor and pupil.

If the politically-focused model creates ultimate citizens by extending the element of identity to encompass the polity as a whole, the autonomy-oriented model curtails the element of identity as far as possible to create the ultimate individual. It is no accident that we are not told anything about the tutor's biography for it plays no role

¹⁸ *Ibid.*, 52.

¹⁹ *Ibid.*, 38.

²⁰ *Ibid.*, 48.

²¹ *Ibid.*, 51.

²² *Ibid.*, 42.

²³ Jeffrey Blustein, *Parents and Children: The Ethics of the Family* (New York: Oxford University Press, 1982), 85.

whatsoever in the upbringing of the pupil. This upbringing is intended as a shield not only from social prejudice and injustice but also from the opinions of parents and tutors. They cannot be allowed to influence Emile's identity for he is to choose his life autonomously. This is especially apparent regarding Emile's religion and citizenship. Contrary to the parent-child relationship where "a child has to be raised in his father's religion," we "who want to teach nothing to our Emile which he could not learn by himself in every country,... shall join him to neither this one nor that one, but we shall put him in a position to choose the one to which the best use of his reason ought to lead him."²⁴ And although we have to be born into some country or other, when we attain maturity and become our own masters we also become masters of renouncing our fatherland.²⁵ Emile, who knows "no other happiness than living in independence" with the one he loves, wants "only a little farm in some corner of the world."²⁶ Not particularly attached to his fatherland, he becomes a cosmopolitan traveller knowing "all the places where he can live" and choosing "where he can live most comfortably."²⁷

Emile has been brought up as if he were Robinson Crusoe, and yet he is not to remain isolated. He is shown the way to society – ideally, that of Rousseau's *Social Contract* – through marriage, settling down and raising a family. This model of upbringing is not meant to prepare one for a life of solitude but for a life of freedom within society. Nevertheless, we may remain sceptical about family (and social) life being possible if we adopt this model, just as we may doubt that the model could be implemented within families. Rousseau's incomplete sequel *Emile and Sophie* seems to reveal his own doubts on this issue. There Emile's marriage to Sophie falls apart and as a consequence he goes into self-imposed exile. Describing his decision, Emile says: "In breaking the bonds that attached me to my country I extended it over the whole earth;

²⁴ Rousseau, *Emile or On Education*, 260; see also at 313-14.

²⁵ *Ibid.*, 455.

²⁶ *Ibid.*, 457.

²⁷ *Ibid.*, 454.

and in ceasing to be a citizen I became all the more a man.”²⁸ This should not come as a surprise. After all, this was what he was brought up to be. At the end of the day, so it seems, the result of an upbringing modelled after Robinson Crusoe is much more likely to bring the child to a desert island, metaphorically if not literally speaking.²⁹

2. The liberal family: Necessary compromise or principled model?

The family as a site of upbringing occupies a middle ground between the two models. As beliefs and practices are transmitted from parents to children, the family is a vehicle of socialization. Children in families are raised to become members of community, not to leave it the moment they are able to do so. From an autonomy-oriented perspective, the family thus constrains the horizons of choice. However, the family is a private form of socialization given in the hands of voluntarily associated individuals, thereby leaving open the possibility of it not conforming to the requirements of the polity as a whole. If children are raised as future members of a community, they are not necessarily raised as future members of the political community. From a politically-focused perspective the family is an agent of particularity. Upbringing in families is neither autonomy-oriented, nor politically focused. Is it, however, a model in its own right?

Both Plato and Rousseau are well aware that their models give rise to grave feasibility concerns. In both cases, the very first realization of the model already seems to rely on its successful implementation. Who will adequately rear the guardians if not already-adequately-reared guardians?³⁰ Similarly, to shield a pupil from social prejudice the tutor would have had to be shielded from social prejudice himself.³¹ Yet even if we

²⁸ Jean-Jacques Rousseau, “Emile and Sophie; or, The Solitaries,” trans. Christopher Kelly, in Christopher Kelly and Eve Grace (eds.), *Rousseau on Women, Love, and Family* (Hanover, NH: Dartmouth College Press, 2009), 296.

²⁹ It is telling that Rousseau intended “Emile and Sophie” to end in Emile’s eventual settlement on a desert island. See the editors’ note in Rousseau, “Emile and Sophie,” 306.

³⁰ The feasibility issue is repeatedly mooted in Book 5 of *The Republic* and concluded in Book 6; see at 207.

³¹ See Rousseau, *Emile or On Education*, 50.

had the resources to realize either model, our prospects of success would remain extremely dubious. Their objectives seem to stand beyond human possibility. We just cannot avoid forming some particular attachments – to our parents, siblings, nannies or tutors – if not as followers then as dissenters, and we cannot remain untouched by our unchosen social setting. Recognizing this, one might interpret the family as a necessary compromise, the result of not being able to go *all* the way towards either social cohesion or individual autonomy. If that were the case, however, we could still push towards the desired end; indeed, some have done precisely that. The more collectivist upbringing that used to be exercised in the Israeli kibbutzim is an example of approaching social cohesion; advocates of cosmopolitan education are an example of a drive towards autonomy.

Yet a different interpretation is also available according to which the family is a particularly liberal model of upbringing, not merely a practical solution, second-best at most.³² Liberalism as a political theory (rather than a comprehensive philosophy) can be characterized by its multiplication and separation of authorities. As Michael Walzer describes it,

[t]he old, preliberal map [of the social and political world] showed a largely undifferentiated land mass, with rivers and mountains, cities and towns, but no borders... Society was conceived as an organic and integrated whole... Confronting this world, liberal theorists preached and practiced an art of separation. They drew lines, marked off different realm, and created the sociopolitical map with which we are still familiar... Liberalism is a world of walls, and each one creates a new liberty[.]³³

To be sure, the art of separation is institutional. “We do not separate individuals; we separate institutions, practices, relationships of different sorts. The lines we draw

³² This is not to suggest it is the only interpretation available from within the liberal tradition. In fact, the autonomy-oriented model, with its perspective of the family as only a compromise, is no less associated with liberalism.

³³ Michael Walzer, “Liberalism and the Art of Separation,” *Political Theory* 12 (1984): 315-30, at 315.

encircle churches and schools and markets and families, not you and me.”³⁴ Chandran Kukathas similarly observes that “liberal thought and particularly liberal constitutional thought has persistently recognized the merits of dividing authority”³⁵:

[T]his involves the familiar doctrine of the separation of powers... In a liberal polity, however, there are more ways still of dividing and separating authority: for authority may be held by a host of other institutions, associations, and communities, none of which is completely subordinate to any other single power, or compelled to abide by a single, common standard of justice.³⁶

The liberal society is not a solidified whole nor is it an aggregation of atomized individuals. It is rather a society of societies. Now liberals will greatly differ about their favoured image of society. Some will prefer Rawls’s moderately integrated “social union of social unions,” while others lean towards an “archipelago of societies” indifferently coexisting alongside each other.³⁷ Yet a society cannot be regarded as liberal if it does not exercise the principle of separation to some degree, and cannot be regarded a society if it displays no integration at all.³⁸ A liberal society must, therefore, incorporate formulae of both separation and integration.

Interpreted in this light the family appears as that society’s principled model of upbringing, also incorporating formulae of integration and separation, and thereby reflecting rather than resolving the tension between the individual and society. If liberalism is a self-subverting political doctrine,³⁹ then the family model of upbringing is

³⁴ Ibid., 325. Cf. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1996), 221: “It is incorrect to say that liberalism focuses solely on the right of individuals; rather, the rights it recognizes are to protect associations, smaller groups, and individuals, all from one another in an appropriate balance specified by its guiding principles of justice.”

³⁵ Chandran Kukathas, *The Liberal Archipelago: A Theory of Diversity and Freedom* (Oxford: Oxford University Press, 2003), 39.

³⁶ Ibid., 265. The reference to justice here seems to stand in stark opposition to the liberal-egalitarian preoccupation with social justice. However, recall my discussion in Chapter 3 of the room Rawls leaves for different conceptions of justice to regulate the various elements of society.

³⁷ For description of these images, see, respectively, John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1999), Section 79; Kukathas, *The Liberal Archipelago*, especially 19-31.

³⁸ Walzer, “Liberalism and the Art of Separation,” 327: “The art of separation works to isolate social settings. But it obviously doesn’t achieve and can’t achieve anything like total isolation for there would be no society at all.”

³⁹ Michael Walzer, “The Communitarian Critique of Liberalism,” *Political Theory* 18 (1990): 6-23, at 15.

one of self-subverting socialization. It produces neither unconstrained individuals nor a harmonized society but diversely contextualized individuals. As a principled alternative to a state of individuals and a family state, we thus arrive at a state of families.⁴⁰

Starting from the autonomy-oriented model, we might imagine the family as a castle with high towers and thick walls protecting the vulnerable child from society's influence. Yet in the family castle you can still see the surrounding valleys from the towers; a drawbridge spans the moat and travellers and merchants come and go. Following the politically-focused model, on the other hand, we might pursue an image of families as cells of a living organism – the political community – though from this perspective, some families are likely to be considered as tumours, whether benign or malignant. In contrast with these two pictures, the account of family justice advanced in this thesis offers to evaluate the family on its own terms which are – as was suggested above – particularly liberal. Pursuing this account of justice thus assumes an understanding of the family that is more adequate but no less principled. To accompany this understanding, I suggest replacing the images of fortified castle and organic cells with that of an atoll, a coral reef enclosing a lagoon.⁴¹

Our most fundamental expectations of the family are a matter of justice, but we usually expect family members to go beyond justice, to feel love and act altruistically. Analogously, an atoll often consists of more than an enclosed lagoon. Around the rim of the reef we may usually find low flat islands or more continuous strips of low, flat land. Now think of the interplay between family justice and social justice in terms of the coral lagoon and the surrounding open sea. The lagoon is an area of relatively shallow, quiet water situated in a coastal environment. It has access to the sea but is separated from the open marine conditions by a coral reef barrier. Seawater moves in and out through passes in the barrier, yet being sheltered, the lagoon waters support distinctive flora

⁴⁰ I borrow the titles from Amy Gutmann, *Democratic Education* (Princeton, NJ: Princeton University Press, 1987), Chapter 1, to denote my own interpretation of the models not hers. Specifically, in Gutmann the state of families is one in which families have exclusive responsibility for children's education. As discussed in Chapter 5, my account does not imply this.

⁴¹ The following paragraph draws upon the *Britannica Online Encyclopaedia* (www.britannica.com).

and fauna. The distribution of coral lagoons is also instructive. They are restricted to tropical open seas which provide the conditions necessary for coral growth. When the sea level rises too fast a barrier may be drowned and its lagoon will cease to exist. Coral lagoons are of great importance to many island communities in the Pacific, particularly where they provide the only quiet water for use as harbours.

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