Toward a New Feminist Liberalism: Okin, Rawls, and Habermas

AMY R. BAEHR

While Okin’s feminist appropriation of Rawls’s theory of justice requires that principles of justice be applied directly to the family, Rawls seems to require only that the family be minimally just. Rawls’s recent proposal dulls the critical edge of liberalism by capitulating too much to those holding sexist doctrines. Okin’s proposal, however, is insufficiently flexible. An alternative account of the relation of the political and the nonpolitical is offered by Jürgen Habermas.

Susan Moller Okin, John Rawls’s foremost feminist critic and advocate, defends his idea of the original position as a tool for criticizing social structures that, she argues, unjustly disadvantage women (Okin 1989, 1994; Rawls 1971, 1993). If Okin is right, this would establish a strong link between a liberalism grounded in justice as fairness and the central goals of the women’s movement. As the possibility of a coherent liberal feminism rides on some such link, Okin’s work is of central importance. I began this study perplexed by the fact that Okin is quite confident that justice as fairness requires that the family be structured according to principles of justice whereas Rawls, despite his silence on this issue, would seem to have to reject this claim. In large part what I do here is explain their disagreement and try to make it fruitful to constructive feminist thinking about liberalism.

In this essay I argue that Okin raises a question central to liberal feminism: How liberal must the “background culture” of a society be to support a liberal “political culture”? Feminists will recognize this as one version of the question concerning the relation between the private and the public realms. After showing how this question is developed in Okin’s work, I argue that both Rawls and Okin fail to offer acceptable ways to conceive of this relation. In conclusion I offer an alternative approach to the question, culled from Jürgen

_Hypatia_ vol. 11, no 1 (Winter 1996) © by Amy R. Baehr
Habermas's recent work in political theory, that I argue is more appropriate and more fruitful to feminist ends (Habermas 1992).  

In particular, in the first part of this essay I focus on Okin's response to Rawls's A Theory of Justice (Okin 1989; Rawls 1971). I show how Okin argues that the difference principle should be applied directly to the family and explain why Rawls would not have us do so. I then show how Okin's claims amount to a critique of the institution of the gendered family. In this section I also take the opportunity to make some clarificatory remarks about gender and liberal feminism. In the second part I turn to Okin's response to Rawls's Political Liberalism (Okin 1994; Rawls 1993). I concur with Okin's claim that her critique of the gendered family comes into even greater conflict with Rawls's recent emphasis on the stabilizing role justice as fairness is to play in a pluralistic society than it did with Rawls's original formulation in Theory of Justice. From Okin's perspective, Rawls's turn to what he calls political liberalism represents a turn toward toleration of sexism. Through a discussion of Rawls's notion of a reasonable comprehensive doctrine, I show that Rawls and Okin differ on what doctrines may be called reasonable. I argue that Rawls illicitly builds into his notion of reasonableness a distinction between political and nonpolitical spheres. I argue as well, however, that Okin's argument for seeing the family as political relies too heavily on the model of the original position, a tool unsuited to this task. I argue finally for a more fruitful way of thinking of the relation between the political and the nonpolitical.

Okin's Justice, Gender, and the Family

Okin's Use of the Original Position

I have reconstructed Okin's use of Rawls's original position in Justice, Gender and the Family (Okin 1989) in three steps. First, Okin stresses that as sex is a morally arbitrary characteristic, it would be veiled in the original position (1989, 101). Rawls himself makes this claim (1975, 37). Choice behind a veil of ignorance is motivated by no differentiating characteristics of persons (such as sex) but rather by the desire, common to all parties, to secure the largest possible share of a set of primary goods. This gives us good reason to believe that parties behind the veil of ignorance would reject principles that distribute goods according to sex group-membership, or according to membership in any group whose common feature is morally arbitrary, for that matter. This prohibition can be used as a tool for feminist critique. It is a weak tool, however, because a liberal society may officially reject sex-specific distributive principles—outlawing official discrimination, for example—but still be characterized by large-scale sex-linked disadvantage produced and reproduced in the private sphere. If the original position's critical potential reached only to this
prohibition on sex-specific distributive principles, persistent patterns of inequality established in the private realm but with influence on the political could be thought benign, as the result of the exercise of citizens' personal autonomy.

Okin's second step addresses this weakness. Making (limited) use of Michael Walzer's notion of complex equality, Okin points out that inequalities in the family seep into and affect the distribution of goods in spheres clearly subject to principles of justice on an egalitarian liberal view (Okin 1989, 174, 182, Walzer 1983). Even if we assume that the family is not the subject of political justice, we can express concern for relations in the family by pointing to this seepage. For this seepage works to maintain a distribution of benefits and burdens in society according to sex. Egalitarian liberals must be concerned with such seepage as they tend to tie the legitimacy of social arrangements to (among other things) a certain measure of manifest (and not simply formal) equality among citizens. This measure of manifest equality is to obtain between citizens in their relations generally in the "background culture" (or private realm) of a society. Thus to point to this seepage of inequality from the family into the economy and politics is to establish a strong ground for addressing inequalities in families as the cause of inequalities clearly seen as political. This focuses our attention on the relation between the realization of the political values of justice and patterns in a society's "background culture," the egalitarian intuition being that certain background conditions securing manifest equality must obtain in order to support the realization of the political values in the foreground.

And finally, with Rawls, Okin claims that despite the ostensibly private nature of the family, it is part of the "basic structure" of society to which, according to Rawls, principles of justice are to be applied (Rawls 1971, 7; 1993, 259; Okin 1989, 94). According to Rawls, the basic structure is "the way the major social institutions fit together into one system"; it includes "the political constitution, the legally recognized forms of property, the organization of the economy, and the nature of the family" (Rawls 1993, 258). Beyond this initial agreement, Okin's treatment of the fact that the family is part of the basic structure is importantly different from Rawls's. Okin argues that parties to the original position—thought of as individuals and not as heads of households—deliberating about principles of justice for the basic structure of society would have the family be directly subject to the two principles of justice. I call this the position that the family must be maximally just. In contrast, Rawls's position is that the principles of justice are not to be applied directly to any one institution but to the basic structure as a whole. Rawls does not give us a rule for determining how particular institutions must "adjust to the requirements that this structure imposes in order to establish background justice" (Rawls 1993, 261). He tells us that "an institutional division of labor must be established between the basic structure and the rules applying directly to
particular transactions" (284), suggesting that some institutions may proceed according to principles inherent to them but that the role of justice is to continually adjust the results. Rawls also points out that the system taken as a whole may be just even where some single institution is unjust (Rawls 1971, 57). This may be the case when relations in one institution make up for injustice in another. The claim of justice as fairness is that the system of institutions as a whole must be just. Thus Theory of Justice does not rule out state intervention in the family to satisfy the difference principle, but it says little about what sorts of adjustments may be required of the family to make it a part of a basic structure that is, overall, just. What is clear is that, for Rawls, justice does not necessarily require that the difference principle in particular be applied directly to the family. I take Rawls to mean that the precise way in which a system of institutions is to satisfy the difference principle in particular is a question for a constitutional convention or a parliament and not for parties to the original position.

Of these three steps, the first, concerning sex-blind principles, is uncontroversial for all liberals. The second, concerning the relation of the background culture to political culture, is an issue that has occupied traditional liberals from John Stuart Mill to John Rawls. I devote considerable attention to the issue in what follows. I argue that Okin points to the right question: How liberal must a background culture be to support a liberal political culture? But I argue that her solution—step three, to apply the principles of justice directly to the family—is problematic.

Maximal Versus Minimal Justice in the Family

To see how Okin’s proposal for justice in the family differs from the common egalitarian liberal view, consider this distinction between two senses in which we can think of the family as subject to the values of justice. J. Donald Moon writes: “Many activities and concerns that fall within the household—for example, the treatment of various family members ... —are, in the liberal conception, properly part of the public sphere, while various activities that were once public—notably, religious worship and festivals—are, in the liberal conception, private. The liberal distinction between public and private does not depend on whether an activity is conducted in the presence of unrelated ‘others,’ but on whether it is the kind of activity that the civil authority may regulate” (Moon 1994, 152).

Moon goes on to specify what “kind of activity” he has in mind. “Inasmuch as human rights can be violated in the personal sphere, the liberal agrees that the personal is the political. Liberalism requires that the civil authority step in to prevent domestic violence, marital rape, and child abuse: privacy does not protect activities that violate the rights of others, no matter where they are conducted” (Moon 1994, 152). Moon’s view is that families ought to be just
in what I call a minimal sense. For Moon, the application of some version of Rawls's first principle, protecting the "liberty and integrity of the person" (Rawls 1993, 291), is the appropriate response to violations of human rights in the family. In addition, for egalitarian liberals like Moon, something like the difference principle is applied to society as a whole, that is, to the system of institutions that make up the basic structure of society, to ensure that inequalities in society in wealth and other basic goods are regulated to the benefit of the least well off (Rawls 1971, 57). And how specific institutions should be arranged in order to fulfill this overall condition is a question for a constitutional convention or a parliament.

In contrast, speaking of "the internal justice of the family," Okin claims that the difference principle ought to be applied to the family itself (Okin 1989, 94). I call this making the family maximally just. Application of the first principle to the family, as we saw in the Moon quote, is relatively straightforward, for it applies to relations between any individuals, regardless of social roles. Application of the difference principle, however, requires a delineated sphere within which a distributive scheme is to be instituted. And it makes a difference if we take that sphere to be the system of institutions that make up the basic structure or if we take it to be the particular institution of the family. The most important difference is that inequalities permitted under the first application may be impermissible under the second. Indeed, this is Okin's intention: to make more rigorous the requirements that the two principles can place on the family. An example of this strengthening of the requirements of justice in the family is Okin's proposed intrafamilial redistribution enforceable with state power.7

Okin effectively changes how relations in the family may be thought to be unjust. Moon's approach claims that family relations ought not violate the first principle, but that they are not the kind of relations that come into direct conflict with the second. Only relations among citizens generally may be thought to violate the second. In contrast Okin writes, "The family [should] be constructed in accordance with the two principles of justice" (1989, 97).

The Critique of the Gendered Family

It is important to note that Okin is not simply advocating a redistribution of wealth in the family, giving women and girls "their fair share." To do so would be to treat the symptoms and not the cause of sex inequality. Rather, Okin sees her argument as a critique of the system coupling the status of the least well off (in the family) with a specific sex, a system enshrined in the gendered family. To be a traditional wife or daughter is to be less well off than one's husband or father or brother in terms of wealth and social power. On Okin's view, the state must move as far as possible to eradicate the system that ensures and reproduces this coupling, again both because the gendered form of
inequality in the family as such is unjust and because inequality in the family undermines fair equality of opportunity and establishes sexed patterns of inequality elsewhere.

The system coupling the status of the least well off (in the family) with a specific sex is the system of sex roles. Of these roles Okin writes, "If any roles or positions analogous to our current sex roles—including husband and wife, mother and father—were to survive the demands of the first requirement [the equal opportunity requirement], the second requirement [the difference principle] would prohibit any linkage between these roles and sex" (Okin 1989, 103). Foremost on the list of those factors enforcing the linkage is, of course, the wide array of practices that make up traditional gendering, where gender identity is taken to be the psychological link between biological sex and social role. Okin writes, "Gender, with its ascriptive designation of positions and expectations of behavior in accordance with the inborn characteristic of sex, could no longer form a legitimate part of the social structure, whether inside or outside the family" (1989, 103). Thus gender, as Okin understands it, is incompatible with the—suitably altered—liberalism of justice as fairness. This claim about gender requires clarification. To this end I make a short excursus.

Excursus on Gender

Okin takes "gender" to mean "the deeply entrenched institutionalization of sexual difference" (Okin 1989, 6). By "institutionalization" I take Okin to mean that, under a gender regime, sexual difference determines in large part the distribution of benefits and burdens. As we have seen, on Okin's view, justice as fairness—suitably altered—opposes such institutionalization, and thus opposes gender. It opposes gender because parties to the original position would reject sex-specific distributive principles, because gendered inequality in the family seeps into and affects sexed patterns of inequality elsewhere, and because parties to the original position would see gender's breeding ground—the family—as violating the principles of justice.

But this way of talking—saying that justice as fairness opposes gender—may lead to the conclusion that it opposes all psychosexual distinctions among persons and requires androgyny. Indeed, Okin herself has seemed to suggest this conclusion: "If principles of justice are to be adopted unanimously by representative human beings ignorant of their particular characteristics and positions in society, they must be persons whose psychological and moral development is in all essentials identical" (Okin 1989, 107).

This is not a new concern, for liberal feminisms have often been accused of requiring androgyny (Jaggar 1988, 38). In the case of Okin, however, I think that this worry is unfounded because it rests on an equivocation on the word "gender." Consider the distinction between two uses of the word "gender." Gender-1 is what Okin calls the institutionalization of sexual difference such
that benefits and burdens are distributed according to sex. If we take gender-2 to mean simply the psychosexual component of identity, then we may claim that justice in the family requires opposing some destructive versions of gender-2, but certainly not that it opposes gender-2 as such. In other words, being nondestructively butch or femme—to name two well-known genders-2—is not in itself in conflict with liberalism. Thus we can oppose gender-1 while affirming gender-2 as compatible with an Okinist liberalism. Indeed, if liberalism did require the abolition of differences in gender-2, it would lose a great deal of its appeal. For, as far as we know, genders-2 will continue to differ. And it makes as little sense to want to eradicate them as it does to want to eradicate differences in persons’ reasonable comprehensive doctrines.

We are also, then, in a good position to interpret the following claim of Okin’s that is initially troubling: “If principles of justice are to be adopted unanimously by representative human beings ignorant of their particular characteristics and positions in society, they must be persons whose psychological and moral development is in all essentials identical. This means that the social factors influencing the differences presently found between the sexes—from female parenting to all the manifestations of female subordination and dependence—would have to be replaced by genderless institutions and customs” (Okin 1989, 107). I understand Okin to be claiming, not that gender-2—the psychosexual component of identity—is in principle incompatible with the unanimous acceptance of principles of justice, but rather that persons must share certain basic capacities to a requisite degree. Okin takes those capacities for autonomy to be infringed upon by “all the manifestations of female subordination and dependence.” It would be a misunderstanding, I believe, to claim that these capacities are incompatible with some gender-2. We need not identify subordination and dependence with feminine, or any other, genders-2.

The main point of this section is that Okin takes justice as fairness—suitably altered—to be critical of the traditional family with its gendering that includes the ascription of roles according to sex. This proposition is shored up by the claim that the capacities for political and personal autonomy are damaged by the forms of female subordination and dependence characteristic of the traditional family. Thus for Okin, justice as fairness includes ideals of maximal justice for the family that must be institutionalized along with the other conditions necessary for background justice.

OKIN AND RAWLS ON POLITICAL LIBERALISM

In this second part I explain how Okin’s use of the original position comes into conflict with Rawls’s new emphasis on the stabilizing role justice as fairness is to play in a pluralistic society. According to Rawls, political liberalism owes its attractiveness, in part, to its being the subject of an overlapping
consensus of diverse but reasonable doctrines. This attractiveness is bought, however, at the price of depoliticizing ideals of the family as too contentious to win such diverse support. To illustrate this, I show how Rawls's view is tolerant of sexist doctrines where Okm's is not. I argue that such tolerance on Rawls's part is, however, the result of his building into the concept of a reasonable doctrine a line between a political and a nonpolitical sphere. I then propose a better way of thinking about the relation between the nonpolitical and the political culled from Jürgen Habermas's recent work in political theory.

The Liberal Feminist Critique of the Gendered Family and an Overlapping Consensus of Reasonable Comprehensive Doctrines

In a recent essay Okin argues that her original claim—that justice as fairness, suitably altered, opposes the traditional family—is in tension with Rawls's new emphasis on the stabilizing role that justice as fairness is to play in a pluralistic society (Okin 1994; Rawls 1993). This new emphasis is the result of Rawls's reception of some criticisms of his earlier work. One line of criticism urged that Rawls withdraw the universal claim of justice as fairness. Some argued that the original position does not represent an Archimedean point from which questions of justice may be settled with the kind of universal validity claimed by Kant's categorical imperative. It represents rather a clarification of modern Western values. Rawls has accepted this reading and has argued that justice as fairness draws on certain ideals latent in the political culture of the Western democracies and thus that its validity is limited to cultures sharing those ideals (Rawls 1980). In addition, some questioned even the validity of the moral claims of justice as fairness within our own culture, arguing that they are incompatible with the sort of moral pluralism that characterizes liberal cultures like our own.

In Political Liberalism (1993), Rawls continues a line of argument from an earlier article (1985), that justice as fairness is indeed a moral theory but not a "comprehensive" one, not one claiming validity for all (or many) spheres of life—as Mill's or Kant's liberalisms did (Rawls 1993, 89-129). Justice as fairness is not such a comprehensive conception but rather a political conception, a moral theory designed only for the basic structure of society and not for other spheres. The diverse doctrines that citizens in a pluralistic society hold apply to these other nonpolitical spheres. Giving an example of what makes a doctrine comprehensive, Rawls writes: "A moral conception . . . is comprehensive when it includes conceptions of what is of value in human life, and ideals of personal character, as well as ideals of friendship and of familial and associational relationships" (1993, 13; my emphasis). Thus if Theory of Justice leads us to believe that the family may be subject in some way to principles of justice—insofar as it is part of the system of institutions that makes up the basic
structure of society.—Political Liberalism reminds us that adjusting the family to the requirements of justice may not meet with the kind of overlapping consensus that we may expect to find in a pluralistic society concerning other measures.\textsuperscript{13} Indeed, Rawlsian political liberalism seems to permit state power to support only minimal justice in the family. This includes, as I have shown, protection against domestic violence, marital rape, and incest. Theory of Justice, in contrast, seems to permit the submission of the family to some requirement set by the application of the difference principle to society as a whole, perhaps even Okin's proposal to redistribute wealth within the family. Thus political liberalism represents a weakening in liberal commitment to family justice.

Rawls holds that limiting the claim of justice as fairness to the political makes it a more viable conception. This is because, according to Rawls, citizens may affirm justice as fairness as a doctrine for this structure while still affirming their own comprehensive doctrines. Justice as fairness can be affirmed as a “module” by citizens holding diverse but reasonable doctrines with reasons stemming from within those doctrines (Rawls 1993, 145). Indeed, according to Rawls, reasonable doctrines are those that can provide reasons for affirming justice as fairness— or some similar political doctrine. Thus justice as fairness need not replace doctrines that citizens hold. Rawls believes that, all things being equal, this would make a society governed by justice as fairness more stable than a society that required its citizens to give up their comprehensive doctrines in order to affirm its political doctrine.\textsuperscript{14}

One way of showing the contrast between political liberalism and Okin's feminist uses of justice as fairness is to show how within political liberalism doctrines may be called reasonable— and thus not contrary to liberalism's basic political values—even if they include sexist “modules.”\textsuperscript{15} Let us look at two examples.

Consider comprehensive doctrines that advocate the use of state power to enforce the masculine monopolization of economic power and political authority. Such doctrines count as unreasonable on both Okin's and Rawls's views for clearly Rawlsian reasons. Although I discuss in more detail below what constitutes the “reasonableness” of doctrines, let it suffice to say here that such doctrines are unreasonable because they deny basic values of justice as fairness, such as equal opportunity in a clearly public realm (Okin 1989, 174). They advocate the distribution of wealth and political influence according to sex. And they advocate the use of state power to enforce their view.

Where Okin and Rawls part company, I believe, concerns those doctrines that can be party to an overlapping consensus about justice as fairness as a political doctrine, and yet advocate that women exclusively take on “private” duties in the family such as child care, care for the elderly, cooking, and cleaning. Such doctrines count as unreasonable on Okin's view, but, I believe, not on Rawls's. Okin's view is supported by the following claims. Such a
doctrine effectively denies women fair equality of opportunity because, as we saw, inequality in the family seeps into and causes inequality elsewhere. And it denies women the maximal justice in the family that Okin argued parties to the original position would require.

I believe that a Rawlsian, however, would hold that the doctrines in question could be based on perfectly reasonable (and personal) convictions about women's natural abilities, about the benefits of female parenting, about female fulfillment, or about a divinely ordained social order. Central to the reasonableness of such doctrines is that they do not advocate using state power to enforce a public caste system. Such views and views with vestiges of these ideas are part of many doctrines commonly held today that—for a Rawlsian, I believe—must be thought capable of being party to an overlapping consensus of reasonable doctrines. To understand these differences between Okin and Rawls's approaches, consider the notions of "reasonableness" and "the political" (and "the nonpolitical") that are central to political liberalism.

Reasonableness

Rawls offers two criteria for being a reasonable person. First, reasonable persons desire to engage in fair cooperation on terms others might reasonably be expected to endorse, and they are willing to abide by such terms provided others do (Rawls 1993, 49). Second, reasonable persons accept the "burdens of reason." That is, they recognize that persons may, through the normal use of their faculties, come to very divergent views, and they "recognize that [their] own doctrine has, and can have, for people generally, no special claims on them beyond their own view of its merits" (Rawls 1993, 60). Now what makes a doctrine reasonable? "A reasonable doctrine is one that can be affirmed in a reasonable way" (Rawls 1993, 60 n. 14). Rawls also holds that reasonable doctrines can come to consensus on his conception of justice. He writes, "I . . . assume . . . that the case for the stability of justice as fairness, or some similar conception, goes through" (Rawls 1993, 66). Because the model of the original position is central to justice as fairness, this amounts to the claim that reasonable citizens "cannot require anything [of one another] contrary to what the parties as their representatives in the original position could grant" (Rawls 1993, 62).

Okin's work invites us to notice the following about this notion of reasonableness. If reasonable citizens "cannot require anything [of one another] contrary to what the parties as their representative in the original position could grant," but Rawls stipulates that the principles they must arrive at may not have implications for the internal structure of the family—because it is private— Rawls has written into the idea of reasonableness a distinction between the political and the private. The feminist intuition is that it is unreasonable to expect parties to the original position (who may turn out to be women), or
members of a constitutional convention or a parliament, for that matter, some of whom presumably are women, to accept this distinction between the political and the nonpolitical. Indeed, Okin's claim is that parties to the original position would reject it. Let us look more closely at the distinction between the political and the nonpolitical.

The Political (and the Nonpolitical)

One way that traditional liberals have distinguished between political and nonpolitical institutions is by reference to the involuntariness of political association and the voluntariness of private associations. Rawls makes claims that seem to support this. He argues, for example, that a conception of justice is political if it applies only to the basic structure of society; this structure is special, according to Rawls, because citizens are involuntarily subject to it. Rawls writes, "Membership in our society is given... [W]e cannot know what we would have been like had we not belonged to it (perhaps the thought itself lacks sense)" (Rawls 1993, 276). With respect to nonpolitical associations Rawls writes, "We may assume that each party... has various alternatives open to them, that they can compare the likely advantages and disadvantages of these alternatives, and act accordingly" (1993, 275). On this view, justice as fairness secures citizens a sphere for personal autonomy by carving out a private sphere. It secures them political autonomy despite the involuntary character of political association insofar as they are subject to only those arrangements that they could reasonably be expected to accept.

In sharp contrast, feminists see the background culture, the sphere of supposedly voluntary associations, as a sphere within which a remarkable consensus among comprehensive doctrines (namely sexist ideology) helps maintain distinct patterns of distribution that clearly reproduce themselves "behind the backs" of persons party to them. Indeed, much feminist work has focused on showing the involuntariness of social relations traditionally thought nonpolitical. On this basis feminists have, as has Okin, sought to recast what counts as political: hence the slogan "The personal is political."17 To claim that women or girls choose disadvantage in the family and its attendant economic and political disadvantage is simply counter-intuitive. Where Rawls sees free and equal citizens benignly affirming diverse comprehensive doctrines, Okin sees enough consensus in comprehensive doctrines in (at least our) background culture that gendered distributive patterns espoused in that consensus are maintained. The idea is that sexism is the subject of an unspoken overlapping consensus, something like what Carole Pateman has called the "sexual contract" (Pateman 1989). Principles rejected by parties to the original position as candidates for political principles are the de facto distributive principles operating in the background culture. The liberal feminist claim is
that a political theory that does not challenge these principles tacitly approves of them.

Continuing the logic of this view, to point out the nonvoluntary aspects of the family is to give reason for seeing the family as subject to the two principles of justice—either in the indeterminate sense suggested by Rawls's A Theory of Justice or in the maximal sense suggested by Okin's Justice, Gender, and the Family. But this way of making the distinction between the political and the nonpolitical is not very fruitful. For once we recognize that little of human social life is radically chosen, as it is assumed on this view, the very distinction between political and nonpolitical loses its sense.

Although Rawls and Okin make claims that support this view, they also both offer a better way of understanding the distinction. They begin with the normative conception of the person that lies at the foundation of Rawls's theory of justice. According to this conception, citizens have two moral powers: the power to conceive and revise a conception of the good life and the power to propose and abide by fair principles of cooperation. These are the powers of personal and political autonomy respectively. Rawls writes, "Since citizens are regarded as having the two moral powers, we ascribe to [the parties to the original position] two corresponding higher-order interests in developing and exercising these powers" (1993, 74). The line dividing the political from the nonpolitical here can be thought of as an enabling condition for the exercise of both powers. Thus drawing the line improperly can jeopardize the exercise of these powers. From this perspective, Okin's concern seems to be that drawing the line in such a way that leaves the political too narrow (and the nonpolitical too broad) jeopardizes citizens' political autonomy—that is, jeopardizes their "right" to live under basic conditions that they can reasonably be expected to accept. Rawls's concern seems to be that drawing the line such that the political is too broad (and the nonpolitical too narrow) jeopardizes citizens' personal autonomy—that is, jeopardizes their "right" to conceive and pursue a life of their own choosing (of course, within the constraints of political justice). Clearly, the goal is to get the line just right. How do Okin and Rawls propose to do this?

Okin's approach begins with the idea that because the line dividing the political from the nonpolitical is an enabling condition for the exercise of the two moral powers, for which parties to the original position have a higher-order interest, it should be of interest to them. And Okin thinks we get the line just right if we draw it where parties to the original position would draw it. There are some problems with this strategy, however. Consider first that Okin herself proposes a flat principle of equality between adult members of a domestic partnership. This flat principle—demanding, for example, the equal division of a paycheck—is quite different from the difference principle. The difference principle would suggest that inequalities among adult members of a domestic partnership are permissible if they raise the level of well-being of the
least well off. But this could potentially justify traditional sexist inequalities. The flat principle of equality reflects the idea that work outside and work inside the home are of equal value to the household and should be equally remunerated. This principle is a better one, for it represents the equal standing of adults in a partnership and models such equality to children.

This leads me to believe that even Okin does not entirely endorse the application of both of Rawls's principles directly to the family. Clearly we need ways to protect women from vulnerability in domestic partnerships, and ways to ensure that girls are raised to have opportunities and self-respect equal to those of boys. But to do this we need not apply Rawls's two principles of justice directly to the family. We may retain the Rawlsian stipulation that parties to the original position deliberate about principles of justice to govern the system of institutions that makes up the basic structure of society, and not about principles for particular institutions. Drawing out the implications of these principles for particular institutions is, on this Rawlsian view, a task for a constitutional convention and for a parliament. And if we continue to hold, as Okin encourages us to, that the family is part of this basic structure, then we may foresee many ways in which the family may be regulated so as to achieve a basic structure that is just. And we can combine these with those that compensate for injustice in the family through indirect means. Which of these methods will be most effective and most in harmony with other social goals we embrace is a question that will meet with differing answers in different contexts. This way we leave the line between the political and the nonpolitical flexible in a way that Okin's proposal does not.

Of course Rawls does insist that parties to the original position deliberate about principles for the basic structure of society. And on his view, precisely how particular institutions are to be adjusted to satisfy the requirements of the two principles is an issue for a constitutional convention or a parliament and not a question for parties to the original position. This would leave the line between the political and the nonpolitical flexible, except for the fact that, as we saw, Rawls's current view appears to fix that line with the family on the nonpolitical side. This is done to make justice as fairness a more palatable conception for a pluralistic society that includes sexist doctrines. But, as I have shown, this attempt to fix the line between the political and the nonpolitical is unreasonable; it holds the normative insights of the original position hostage to a patriarchal status quo.

The Habermasian Alternative

The Habermasian alternative that I sketch here is controversial. My intention is merely to present this alternative (without considering criticisms of it) and to indicate how I think it avoids the pitfalls of Okin's and Rawls's views. Okin proposes that we draw the line between the political and the
nonpolitical from the perspective of parties to the original position. This proposal lacks flexibility and leads to conclusions we may not want to accept. Rawls's position seems to be that we draw the line ultimately from the perspective of the comprehensive doctrines that characterize the background culture. But this proposal is flexible in the wrong way and lacks a critical edge.

On the Habermasian view, we begin with the same normative conception of the person Rawls and Okin begin with. Habermas takes as basic "the idea of autonomy, according to which persons act as free subjects to the extent that they follow those laws which they have given themselves, in accordance with intersubjectively ascertained insights" (Habermas 1992, 537). This basic notion of autonomy takes the form of both personal and political autonomy—they are, in Habermas's terminology, co-original (gleichursprünglich) (1992, 138). This means that the rights delineating a sphere of private autonomy and those delineating a sphere of political autonomy may not be normatively ordered. Neither set of rights is normatively prior or more basic, and thus neither set may be instrumentalized to, or derived from, the other. However, although personal autonomy is not to be instrumentalized to political autonomy, we can say nothing about what the content of a private sphere should be unless citizens exercise their political autonomy to give it this content. And clearly, if citizens are to be able to exercise their political autonomy equally, certain enabling conditions must obtain in the background culture of society. On my reading of Habermas, these conditions determine how much and what kind of manifest equality must characterize the background culture of society.

In an interesting discussion of feminist concerns with the paternalism of the social welfare state, Habermas takes up the following question: How can we determine when state intervention undermines the private autonomy of citizens? (Habermas 1992, 503). Habermas answers: Citizens must decide politically where to draw the line between the political and the nonpolitical guided by the concern that the line must enable citizens to realize their role as participants in the political process. And for Habermas, realizing this role implies much more than voting in general elections (1989). It includes participation in public discourse in the public realm, in the "open and inclusive network of overlapping publics" which serves to frame issues as political in the first place (1992, 373). He writes: "The unequal distribution of basic goods diminishes the . . . rationality of collective decisions. Thus a policy of compensation for the unequal distribution of available social goods can be justified as measures enabling citizenship [Staatsbürgerqualifikationspolitik]" (504).

To insist that the line between the political and the nonpolitical be drawn guided by the concern for enabling political participation permits us to focus attention on the basic structure of society (as Rawls does), but does not make
any institutions off limits for adjusting. This is more flexible than Okin’s approach, and has greater egalitarian implications than Rawls’s. For a principle requiring that level of manifest equality necessary (in Rawls’s terminology) to secure the fair value of the political liberties is more demanding than the difference principle (Cohen 1989, 18; Baynes 1992b, 159-60). And its egalitarian implications insist on more than simply an equitable distribution of wealth but focus our attention on all those conditions (including those particular to women’s situation) that disable citizens from exercising their political liberties (Baynes 1992b, 161). This level and kind of equality will surely come into conflict with some of the doctrines citizens hold—especially those doctrines that insist on maintaining women’s disadvantage. But feminists should take such a conflict as a sign that we are getting our political theory right and not letting its normative content be held hostage by a patriarchal status quo.

Notes

1 I thank Andrew Altman, Kenneth Baynes, Eileen Feder, Eva Kittay, Kevin Melchionne, and an anonymous Hypatia reviewer for their comments on this paper.

2 Many feminists have contributed to our knowledge concerning just how patterns of inequality in the private realm influence public inequality. Besides Okin, see for example Kittay (1995) and Held (1987).

3 Okin takes from Waller the idea that seepage from one sphere to another is a sign of injustice. Okin clearly does not agree that spheres should have differing regulative principles, for she takes the principles of justice to be regulative in many spheres (Okin 1989, 174, 182; Waller 1983).

4 The gendered family undermines equality of opportunity of wives primarily through the double burden of work outside the home and traditional women’s work in the home. The daughter’s equality of opportunity is jeopardized both by her taking on of a disproportionate amount of work in the home and by the traditional gendering to which she is subjected, gendering that predisposes her to enter a disadvantageous marriage.

5 For example, Rawls writes, “Certain background conditions are necessary if transactions between individuals are to be fair; these conditions characterize the objective situation of individuals vis-à-vis one another” (1993, 269).

6 We can imagine two types of policies to see on this normative concern for seepage. One type attempts to cause a “reverse seepage.” An example of this would be encouraging girls’ sports in public schools. The idea here would be that the forms of self-confidence fostered in girls’ sports may seep back into the family. The other type would attempt to treat the inequality in the family itself. Examples of this are social support for housework or Okin’s example of an intratamulal redistribution of wealth, discussed in note 10.

7 In her book Justice, Gender, and the Family Okin convincingly argues that Rawls’s initial insistence that parties to the original position be heads of households
amounted to a tacit gendering of those parties as male. Any agreement struck by one
gender is, of course, a violation of the deeper contractualist claim that the acceptability
of social arrangements is their acceptability to each, regardless of particularizing char-
acteristics (Okin 1989).

8. For example, Rawls writes, "Which [economic] system ... most fully answers to
the requirements of justice cannot, I think, be determined in advance ... It depends
in large part upon the traditions, institutions, and social forces of each country, and its
particular historical circumstances" (Rawls 1971, 274).

9. Okin suggests that "employers make out wage checks equally divided between
the earner and the partner who provides all or most of his or her unpaid domestic
services" (1989, 181). It is important to note that the paycheck proposal is meant to
satisfy the requirements of maximal justice in the family. Other more common feminist
proposals Okin makes—quality subsidized child care, parent-friendly working con-
ditions, equity in schooling, enforced child support and alimony—aspire to sex equality
by tinkering with the system of basic institutions that makes up the basic structure while
avoiding direct political intervention in the family.

10. And there will continue to be variation within genders.

11. This is a very important issue, for genders can take on destructive forms—for
example, selfless femininity and abusive machismo. Carol Gilligan's description of
conventional level care reasoning, requiring the submerging of self into other, would be
an example of destructive feminine gender (Gilligan 1982). There is much more to be
said on this issue than I can say here. I wish simply to claim that a liberal feminist need
not hold that having a gender-2 (masculine, feminine, or some other gender) by itself
rules out also having certain autonomy capacities.

12. For an overview of debate on this point see Baynes (1992a).

13. In other words, for Rawls, we cannot expect to find ideals for the family among
those ideals that later find a place in a constitution. Nor, I should add, should we expect
to find much consensus at the legislative stage. This suggests not only that Okin's policy
suggestions redistributing wealth within the family may not meet with agreement at
either stage, but that many comprehensive liberal proposals such as parental licensing
may not expect to meet with agreement. On this topic see Kymlicka (1991). On the
four-stage sequence to which I refer here, see Rawls (1971, 195). Bruce Ackerman even
suggests that the difference principle itself does not survive Rawls's turn to political
liberalism. See Ackerman (1994).

14. Clear examples of such regimes would be the illiberal regimes of state socialism
and theocracy, but, so the reasoning goes, comprehensive liberalisms would also be
unstable.

15. Rawls uses the term "module" to refer to the way in which a political conception
of justice can be embedded in a person's comprehensive doctrine. See Rawls (1993,
145).

16. Examples of such doctrines may be found in traditional religious groups. As
Okin writes, "Rawls's inclination is to find religions reasonable" (Okin 1994, 31).

17. Some writers on feminism have wrongly cited the slogan as "The personal is the
political." This way of putting it equates the two where, I believe, feminism wants to
realign their relation.

18. Without providing the arguments here, I (as do Rawls and Habermas) reject the

19. I thank Andrew Altman for this point.
20. See the recent exchange between Rawls and Habermas (Rawls 1995; Habermas 1995).

21. All references are to the German edition. All translations are mine.

REFERENCES


