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**FAMILY FAIRNESS**

by

**EDNA ULLMANN-MARGALIT**

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**Feldman Building, Givat-Ram, 91904 Jerusalem, Israel**  
**PHONE: [972]-2-6584135      FAX: [972]-2-6513681**  
**E-MAIL:                      ratio@math.huji.ac.il**  
**URL:      <http://www.ratio.huji.ac.il/>**

## **FAMILY FAIRNESS**

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This paper is the last part of a three-part project. The larger picture is important for the proper framing of the present paper. Here then is an abstract of the three-part paper, which is about *considerateness*.

Focusing on two extreme poles of the spectrum of human relationships, the paper argues that considerateness is the foundation upon which relationships are to be organized in both the thin anonymous context of the public space and the thick intimate context of the family.

The first part of the paper introduces the notion of considerateness among strangers and explores the idea that considerateness is the minimum that we owe to one another in the public space. By acting considerately toward strangers—for example, by holding a door open so it does not slam in the face of the next person who enters—we show respect to that which we all share as people, namely, our common humanity.

The second part explores the idea that considerateness is the foundation underlying the constitution of the exemplary family. I hypothesize that each family adopts its own particular distribution of domestic burdens and benefits and I refer to it as the “family deal.” The argument is that the considerate family deal embodies a notion of fairness that is a distinct, family-oriented notion of fairness.

The third part of the larger paper—which is the part I present here—takes up the notion of family fairness and contrasts it with justice. In particular, I take issue with Susan Okin’s notion of the just family and develop, instead, the notion of the not-unjust fair family. Driving a wedge between justice and fairness, I propose that family fairness is partial and sympathetic rather than impartial and empathic, and that it is particular and internal rather than universalizable. Furthermore, I claim that family fairness is based on ongoing comparisons of preferences among family members. I finally characterize the good family as a not-unjust family that is considerate and fair.

### **I. FAIRNESS IN THE FAMILY**

In forging the family deal, considerations of fairness apply. They apply as well in the subsequent process of continually readjusting the deal in response to changing cir-

cumstances. Members of the “good” or exemplary family will want to be fair to each other and will attempt to ensure that their family deal, as it evolves and changes, is guided by considerations of fairness.<sup>1</sup> However, family members’ idea of family fairness is likely to reflect an understanding of fairness that is different from the way fairness is understood in the context of other social institutions. In particular, “fair” within the family tends not to be equated with “equal.”<sup>2</sup>

A basic intuition about justice is the idea that similar cases ought to be treated similarly. What is to count as similar and when do differences make a difference that would justify departure from similar treatment—these are questions of both principle and interpretation, on which different theories of justice differ. Now, the flip side of this “justice coin” states that dissimilar cases allow for, or indeed require, dissimilar treatment. I take this as the clue for the notion of fairness in the family. Treating similarly placed family members similarly is a hollow precept: each member of the family is uniquely placed. The considerate family deal embodies the concept of treating the dissimilarly situated members of the family dissimilarly, yet fairly.

To appraise the fairness of my family deal I must take into account my spouse or partner in his or her fullest particularity. Furthermore, I must engage in a comparison of our preferences and of their intensities: the economists’ myth notwithstanding, in the context of the family we do this all the time. If my family consists of more than myself and my partner, I must take into account all the members of my family in their fullest particularity, too, and engage in similar inter-personal comparisons among all of us. “Fullest particularity” comprises more than needs and desires. It must comprise all aspects of the personality, such as each family member’s competences, talents, and strengths as well as their problems, special needs, weaknesses, and vulnerabilities; even their idiosyncrasies and fantasies. Moreover, fullest particularity includes family members’ positional and comparative attributes, in addition to the ordinary non-comparative ones: “old,” “younger than” or “neediest” illustrate the point.

Reaching beyond synchronic time slices, the comparisons of preferences have a diachronic dimension as well. Families are communities of memory. Family history matters; past deprivations, sacrifices, privileges, or bonuses count. For my family deal to be fair, the distributive package that constitutes it must also be path dependent. Family fairness takes the long view. It has to take into account how each of us got to be where we are and it has to have corrective, compensatory, and rewarding aspects. Furthermore, in appraising the fairness of my family deal I must be conscious that the fu-

ture weighs too, not only the past. The plans, projects, and fantasies of my family members must often be accommodated by the family deal whose fairness I am trying to appraise. My teenage daughter's hope to go to college, for example, and the various ramifications of this hope, might have to be factored in.

I have used first-person language in the previous paragraph advisedly. I think that while we have a license to try to appraise the fairness (or otherwise) of our own family deal, we do not have a license to appraise that of another family. To be sure, we may sometimes form opinions, even strong ones, about other families. We may think that a family we know has managed to work out a wonderfully fair deal, or we may assess another family's deal as rotten unfair. But then we are advised always to be careful to add to this opinion a caveat like "but of course what do I know, I am not a member of that family" or "still, this is only how it looks from the outside."

Such caveats suggest that we intuitively sense two important points. First, that we take the category of fairness to apply, in some broad sense, to family deals; second, that the appraisal of the fairness of a family deal is essentially an internal affair. It has a perspective-dependent aspect and can therefore only be undertaken from within one's own family. In other words, a counterfactual seems to be implicit here: had we known everything that there is to know about the other family and its members, we would be in a position to pass judgment about the fairness of its deal. At the same time, however, we recognize that we cannot ever know everything there is to know about another family.

Having said that, I note that even to appraise the fairness of one's own family deal is a tricky matter. One complication concerns children. Until a certain age children are not capable of making fairness evaluations and it is the parents who make them on the children's behalf. (A twist on this point is that at the same time that parents may wish to ensure the fairness of the deal they are giving their children, they have to be also fully aware that what one of the things young children need most is to be treated *partially*).<sup>3</sup> From a certain age children think they can make fairness claims and indeed they make them, even with vengeance. But it is not at all clear that they are competent to make them, much less to assess them. As for grown-up children (which is, after all, what we all are), we often wonder whether they can ever really be fair in their appraisal of the fairness of their parents in general and of the deal their parents dealt them in particular.<sup>4</sup>

Generally speaking, there are no set criteria for the fairness appraisal of one's

family deal, and it is not clear that there is a “right answer” whether or not one’s family deal is fair. There is no algorithm to calculate the fair deal or a systematic way for working out how it is to be achieved, beyond assuring that it passes the not-unjust test (about which more later). Yet it does seem to be the case that family members are capable of pondering whether the current family arrangements in their own family are fair toward them. I ponder this matter vis-à-vis the other members of my family and also in comparison with alternative family arrangements my family might have adopted. In addition, it seems to be the case that it is possible for me to ponder whether current arrangements are fair not just toward me but, say, toward my son—again, vis-à-vis the other members of the family. Some vague background notion that everyone should get their weighted due seems to be operative here.

Moreover, I can be quite clear about the various considerations that do and should enter this appraisal. I can also well envision a family dinner-table conversation about this issue. In light of what gets aired in such a conversation, we may decide to change some of our current arrangements so as to improve on their overall fairness. But I cannot envision such a dinner-table conversation taking place behind a veil of ignorance, masking from view family member particularities. The notion of fairness that is driving the process of forging the family deal is heavily weighted by the particularities of the participants and the idiosyncrasies of the family circumstances. Consequently, useful generalizable principles can hardly be expected to emerge from this process; nor can the specific deal itself be expected to be usefully generalizable to other families.<sup>5</sup>

Two newspaper reports, in late 2004, highlighted families with autistic children and their “fight for the ordinary” (Gross, 2004a; 2004b). The reports make the point that “it is a relentless, labor-intensive and harrowing task, overwhelmingly performed by mothers.” This is a task that “tests the strength of marriages, the resilience of siblings and the endurance of the women themselves.” The first story goes on to describe what this means in the case of the Krieger family, affording us a glimpse into their family deal: “For Ms. Krieger it has meant accepting that her husband’s patience with Gina is more limited than her own; being careful not to overburden or ignore her 6-year-old daughter, Nicole; and arranging occasional telecommuting so she can continue working.” In the second story we are told that “Derek can certainly be annoying, but [his brother] Mark is used to it and sees the silver lining. ‘He brings us together more, because we’re in it as a family,’ Mark said. Still, he is hyper-vigilant, more an auxiliary parent than a brother to Derek no matter how many times

his parents tell him that it is not his job.”

Is it fair that Mr. Krieger gets away with having less patience than his wife? Is it fair that Ms. Krieger should be the one who makes career changes so that she can work from home?<sup>6</sup> Is it fair that 15-year-old Mark takes it upon himself to be an auxiliary parent to his younger brother Derek? These are vexing questions. The overall picture that emerges, however, is of two families who are by and large admirably successful in their struggle to work out a family deal that adjusts to the trying circumstance of autism in the family, and to remain functional. Here is how the story about Derek ends, providing a touching instance of a son’s considerateness toward his mother: “One blustery evening, for instance, his mother was enjoying a cup of tea when, upstairs, Derek’s steady gait turned to jump-up-and-down pounding and his high-pitched sing-song to a shriek. That usually means his brother is happy, Mark said, but you can never be too careful. ‘I’m going up to check on him,’ he said.”

## **II. PARTIALITY**

Family fairness, as presented and discussed above, is not impartial. On the contrary, it relies in an essential way on the intimate acquaintance of family members with the full particularity of each other. It is also predicated on comparisons of preferences among the members of the family and even on comparisons of their intensities. We saw moreover that the fair family deal has to be sensitive to the past and to the future, and that in any case its appraisal is highly perspective dependent and hence internal.

The capacity for empathy, which is the ability to see things from the perspective of others, is sometimes mentioned as essential for the sense of justice (see for example Okin, 1989a: 21). I suggest that sympathy, which is the capacity for fellow-feelings (see Smith, 1759) is essential for the sense of family fairness. It is the power not only to see things from the perspective of others but to be favorable to their perspective. What the blindfolded goddess Athena is prevented from seeing might, for the purpose of doing justice, be irrelevant. But for the purpose of appraising family fairness, what she does not see may be highly relevant.

Is Rawls’s notion of the veil of ignorance applicable to the family deal? Could family members have “hypothetically agreed to their structure and rules from a position in which they did not know which place in the structure they were to occupy”? (Okin, 1989a: 94) Rawls developed his idea of the original position as a device of representing impartial concern in the attempt to arrive at social institutions that are

just. With regard to the family, Rawls's view has been the focus of much criticism, especially his definition of the contracting parties behind the veil of ignorance as "heads of family" or "heads of households." (Rawls subsequently modified this position somewhat.)

In Rawls's general scheme, the deliberating parties behind the veil of ignorance are supposed to be mutually disinterested individuals, devoid of any "ties of sentiment."<sup>7</sup> They do not know who they are. They are all assumed to think identically, none of them being in a position to tailor principles to his or her own personal advantage. The "direction of fit" in this scheme goes from the principles arrived at by these abstracted, disembodied, veiled agents to the flesh-and-blood people who will then apply the principles to their real-life situations. That is to say, the real and particular people must abide by the principles they arrive at when behind the veil of ignorance, and in this sense they must fit themselves to these principles. If they fail to do so then the failure of fit is with them, not with the principles.<sup>8</sup>

Matters are different when we come to apply these ideas to the case of the family. The participants forging the family deal—the founding couple, initially—bring themselves to the task in their full particularity. After all, when deciding to marry, it is a highly particular person—warts and all—whom one marries, not an imaginary person who scores highest on a "partner's description" devised ahead of time. People who decide to share their lives do so not as mutually disinterested bargainers but, to the contrary, as highly mutually interested parties who intend to work out their domestic arrangements in a way that reflects the strongest "ties of sentiment" between them. They are to be thought of as being in a position to tailor the package of domestic burdens and benefits to their mutual advantage and sometimes even to each other's advantage rather than to their own personal advantage.

Moreover, as already pointed out, interpersonal comparisons of preferences are a matter of routine in family life. "You mind this more, so let me do it" is a common feature of sound domestic arrangements. The "direction of fit" in the case of the family is thus the reverse from what it is in the case of other social institutions, flowing from the particular members of the family to the principles and arrangements. We, as the highly concrete individuals that we are, arrive at the set of domestic arrangements that fit us best and that give each of us our weighted due in the broad sense here expounded. Should there be failure of fit, it is typically the arrangements we have arrived at that are at fault and in need of being rethought.

### III. JUSTICE AND THE FAMILY

According to Rawls, an institution is just if its rules and workings could in principle be established by its members agreeing to them from behind a veil of ignorance. For Susan Okin this applies to the family as well. What she calls a “better-than-just” family is one that, in addition to being just, is regulated by intimacy and love. Okin holds that the institution of the family must be built on a foundation of justice before it can be adorned (as it were) by “the best of human motivations and the noblest of virtues” (1989a: 32): justice first, noble virtues—optionally—later.

The position I am putting forward here is that the institution of the family should be built upon a foundation of considerateness, which embodies a distinct notion of fairness referred to as family fairness. But where does this leave the question of justice in the family<sup>9</sup>? Can the family be just? Must it be just?

Rawls’s view is that justice is the “primary virtue” of all social institutions. If so then the family cannot be thought of as falling outside the bounds of justice.<sup>10</sup> Rawls does not explicitly address the question of justice in the family as such, however. For various purposes he needs the family to be thought of as a just institution and so he posits it as just: “I do assume that in some form the family is just” (Rawls, 1993: xxix; see Okin, 1989a: 27 and all of chap. 5).<sup>11</sup> At the same time, Rawls upholds the separation of the public from the domestic sphere. He sees questions concerning the division of domestic labor as private family matters governed by natural sympathy rather than by principles of justice (for more, see Kymlicka, 1991: 79).

Susan Okin has written a powerful book to champion the cause of applying the standards of justice to the family (Okin, 1989a). She criticizes classical liberal thinkers who take the family to be a male-headed natural unit and consider internal relations among family members as falling outside the bounds of justice (see Kymlicka, 1991: 78).

Okin argues, on the descriptive side, that “typical current practices of family life . . . are not just” and, on the normative side, that “until there is justice within the family, women will not be able to gain equality in politics, at work, or in any other sphere” (1989a: 4). For Okin, the family is not merely one among many institutions that have to be just in order for society to be just. Her position, rather, is that the just family is the very basis for a just society; the family, she says, is “a school of justice.”

To defend her claim that the family ought to be based on justice, Okin must go beyond the attempt to extend Rawls’s theory of justice to the domestic sphere. In fact,

it is not even clear that the project of extending Rawls's ideas to the family unit is entirely coherent and free of internal contradiction. In a rather straightforward sense the just family is an essential building block in Rawls's edifice. Yet, as indicated, he relegates the family to the private sphere, and he maintains that behind the veil of ignorance men make their deliberations and choices qua heads of families and not strictly qua individuals. These considerations stand in the way of seeing the family simply as one more social institution to which Rawls's principles can and perhaps should apply.

Rawls's position on the family as a just institution, then, is not free of ambiguities. In contrast, entirely unambiguous about the question of justice in the family are two different clusters of doctrines that must be briefly considered in this context. Both of them stand in clear opposition to the notion that the relationships among the members of the family ought to be regulated by justice. Each of these doctrines holds that it is inappropriate to apply the category of justice to the family, but for different reasons. Michael Sandel (1982) is considered by Okin the most prominent contemporary proponent of one of these doctrines and Allan Bloom (1987), who is following in the footsteps of Rousseau, of the other.

The first doctrine sees the family as an intimate group characterized by a harmony of interests. As such the family is taken to be above justice; it is an institution that is expected to be "more than" just or "better than" just. Justice on this view is considered inappropriate to the family in that it belittles the family or misses its point, as it were. While justice is a virtue, it is taken by this doctrine to detract from the nobility of family relationship. The second doctrine considers justice inappropriate to the family because it sees the institution of the family as an inherently and naturally unjust. Given the hierarchical structure of the family and the gender differences between its members, the family according to this view can not and should not be thought of as an arena for just divisions of burdens and benefits. Justice on this view is a virtue alien to the family, even harmful to it.

The second, old-fashioned approach is more extreme in its outright rejection of the notion that family relationships be based on principles of justice. It rejects equality for women as contrary to nature and embraces the notion that nature determines a gender-dependent hierarchical structure for the family that is necessarily unjust. The first, sentimental approach, in contrast, does not altogether reject the notion of the just family but rather sees justice as irrelevant for the ideal family. Maintaining that the interests of each member of the family are entirely convergent with those of the fam-

ily's patriarch, this position sees the insistence on justice in the family as pointless. On this view, in Okin's words, "An intimate group, held together by love and identity of interests, the family is characterized by nobler virtues" (Okin, 1989a: 26; see also Okin, 1979: 202; Kymlicka, 1991: 78).

Okin's vigorous rebuttal of both these doctrines is animated by her thesis that underlying the social inequalities that exist between the sexes in our society is the unequal distribution of labor in the family. I believe that it is possible to agree with Okin on this general thesis and yet not to accept her view that the institution of the family is on a continuum with all other social institutions and that as such it must, like them, be built on a foundation of justice.

#### **IV. THE GOOD FAMILY**

My own unease with the idea that the family is to be constituted on principles of justice is by no means an endorsement of the idea that the family should be allowed to be unjust. To the contrary, the argument I offer is that a precondition for the good family is that it is not unjust. In other words, the elimination of injustice is in my view a threshold condition for the good family. Putting it this way, in terms of a double negative, indicates that I do not see "just" and "unjust" as complementary adjectives. To characterize an institution as not unjust does not amount to characterizing it as just. An institution might be in an "interim zone," as it were, where it will be considered not unjust and yet it will not quite qualify as just either, in light of some positive strictures of justice.<sup>12</sup>

Aiming to explore the idea of a family that "works" and is functional (as distinct from dysfunctional), I refer to it as a "good" family. The thrust of my discussion of the good family is normative. Yet I choose not to talk about the *ideal* family in order to avoid the impression that the good family is unattainable. An ideal alludes to the notion of a regulative idea, a high-above star that shows you the way by shining bright at the end of the path but remains distant and unattainable, regardless of how close you think you have approached it. The considerate family is a good family. This is a reachable ideal; it is a normative notion that is also descriptive. From experience as well as from literature, we all know good, considerate families; the lucky ones among us recognize their own family as such.

Tolstoy famously said that happy families are all alike. A happy family may perhaps be easy to recognize even if it is not so easy to pin down conceptually, and

anyway it may be that only the good family in the sense here expounded can be happy. All good families are also alike, in some important respects. It is these respects that I focus on: my account of considerateness attempts to explore what they have in common and what makes them good. Tolstoy may have meant to imply that the happy family is intrinsically uninteresting and only the unhappy ones—each unhappy in its own way—are of interest. With regard to the good family, however, I want to make the opposite case. I believe that breaking the code of the good family, examining what it is that makes it work and function, is a worthwhile and interesting undertaking.

The better prototype, in any domain, is better understood, the countless ways of deviating from it can also be better understood; indeed, in some instances a metric can be devised to measure the distance of the deviants from the prototype. Regarding the family it may remain true, perhaps even be reaffirmed, that each dysfunctional family is dysfunctional in its own way. But these less fortunate cases will stand a greater chance of being better analyzed and understood once the prototype of the functional family is better understood.

A family whose domestic arrangements are unjust cannot be considered good. The absence of injustice is a threshold condition for the goodness of the family. Purged of injustice, the good family is one whose family deal is considerate. The not-unjust, considerate family is fair, in the distinct family-oriented sense of fairness discussed earlier.

## V. “NOT UNJUST”

I need to say more about the elimination of injustice in the context of the family. Injustice is here meant to refer to clear cases of injustice as judged by prevailing standards of justice. These include as an important special case any practice or arrangement that is legally unjust. “Legal constraints that apply to all individuals and associations should also apply to the family.” (Munoz-Darde, 1998: 349) We would nowadays consider it unjust for a wife not to be allowed to inherit her husband, or for a daughter not to be allowed to inherit her parents if she has brothers.<sup>13</sup> The eighteenth-century doctrine of “coverture,” according to which the married woman’s property as well as her body, her children, and her legal rights belong to her husband, would be considered unjust by the standards of the twenty-first century.

Blatant inequality, gender-based or otherwise, in the access to family resources such as property, money, or leisure, would likewise be judged unjust. Male tyranny

within the family over his womenfolk's bodies and lives, systematic exploitation, discrimination, coercion, and physical abuse all count as clear cases of injustice by our current societal standards.<sup>14</sup> Also unjust are domestic arrangements that are based on the systematic sacrifice of one particular, usually female, family member<sup>15</sup> (the wife/mother, an eldest daughter, or as folklore would have it, a "spinster aunt"). To be sure, sacrifice gestures do and perhaps should occur in the course of normal life of the normal family.<sup>16</sup> But the reliance on systematic self-renunciation, especially if it is habitually expected of the same person, is no different from exploitation.

I believe that the elimination of unjust family arrangements, as appraised in light of prevailing standards of justice, is a move in the right direction. Still, this leaves room for a margin of troublesome borderline cases. If in a poor family the man is out of the home, breadwinning all day long, and the woman is charged with all of the responsibilities of home and children, the division of labor in this family may strike us as unfortunate but it can hardly be pronounced unjust. If the man in this family does not bring home his daily wages but drinks them away in the local pub every evening, this will strike us as unjust (see for example Frank McCourt's harrowing autobiographical account, 1996).

But consider now an ultra-Orthodox Jewish family in the Mea She'arim quarter in Jerusalem. The man is out all day studying while the woman stays home to take care of their many children, having to make do with the small state allowance that her husband receives for devoting his life to study. Voluntarily entered into by both husband and wife, the domestic arrangements of this family are quite typical of a sizeable community. A man's lifetime devotion to the study of scripture is, for the members of this community, the highest value; the wife enjoys reflected glory to the extent that her husband excels in his studies. How are we to appraise the division of labor in the families belonging to this community? It may be tempting to hurl accusations of "false consciousness" at the women in this community, inasmuch as they express contentment with their lives. I suspect that Okin would assail the division of labor in these families as outright unjust. But I find this case troublesome. While I can hardly see them as just, I would hesitate to qualify the domestic arrangements of these ultra-Orthodox families as unjust either.

## **VI. JUSTICE IN THE FAMILY**

Injustice makes for the badness of the family, as it makes for the badness of any other

social institution. The elimination of injustice is a necessary condition for the working of the good family. Still, as was pointed out, to eliminate injustice is not quite the same as to instate justice. But what does “just” mean in the context of the family anyway?

For Okin the answer is unambiguous. Her ultimate long-term goal is a “just, gender-free family” that is part of a just, gender-free society. In the just family there will be “equal sharing by men and women of paid and unpaid work, productive and reproductive labor” (Okin, 1989a: 171). In particular, it is the equal sharing of domestic labor that is in Okin’s view the condition for justice in the family.<sup>17</sup> I find this view wanting and too restricted in several respects. In general, the condition of equal sharing of domestic labor is neither a necessary nor a sufficient one for the good family.

Let me note, first, that labor cannot be the sole concern here; there is more to justice in the family than equal distribution of labor alone. Family life involves an intricate package of domestic burdens and responsibilities, as well as benefits and privileges, the distribution of all of which is relevant to the issue of justice. Let us notice, also, that from much of Okin’s writings one might form the impression that the family unit consists of a couple or even, more accurately, of a man- and-woman couple.<sup>18</sup> Since her primary concern is justice between the sexes, her interest in the family is primarily as a major locus of sexual inequality. But the wider-ranging questions regarding the working of the good or functional family do not interest her beyond making the point that men and women should be equally responsible for domestic life and that all assumptions about male and female roles within the family should be abolished.

Okin’s cause is equality for women and her book is a crusade for the recognition of women’s unpaid domestic labor and against women’s domestic exploitation. Let us imagine, however, that domestic labor has indeed been sufficiently recognized by society for its worth and let us suppose further that, given this recognition, a particular woman opts of her own free will to take upon herself the domestic labor of home and children. Of course, as in the case of the ultra-Orthodox family, the question of how free is free choice in such instances is hard to settle and the lurking danger of false consciousness, here too, is a complicating factor. Still, given these caveats, would it be possible for Okin to sanction this woman’s choice? If, as I suspect, it would not, I find this troubling.

When Okin’s discussion goes beyond the couple unit and includes children as

part of the family, she tends to see the children merely as contributing additional domestic labor to be shared by both their parents. This may be understandable given Okin's perspective of concern with justice for women and sexual equality. But if the focus is the functioning of the good family then we must be thinking in more general and in more dynamic terms. For example, we must be thinking that children may be expected, from a certain age, to share some of the burden of domestic labor. Indeed, children have to be thought of as continually growing up and as being gradually initiated by their parents into the family's ever-evolving array of domestic burdens, responsibilities, benefits, and privileges.

We must also be taking into account the point that questions concerning the distribution of resources and responsibilities apply horizontally, among siblings, as well as vertically between the generations. Sometimes the vertical axis eventually changes direction and the children may have to assume responsibilities toward their parents. In addition we must allow for the open-endedness of membership in the family. People are added to the family, as when a new child is born or a grandparent moves in, and people leave the family, as when somebody goes away or dies.

I take all of these considerations to show that Okin's position is too restricted. But quite apart from these considerations, I question the idea that "equal sharing of domestic labor" is, in and of itself, adequate for capturing the working of the good family. At any rate not when equality is "measured with a plumb line" (Carrington, 1999: 206). The idea that the couple can be imagined to go through some procedure in which they list all the domestic tasks and chores and then divide them more or less mathematically down the middle, possibly even drawing lots as to which half should fall to each, is a recipe for frustration and failure. In the workplace it is possible to compile lists of tasks and job descriptions and then to hire suitable people to perform these tasks and to fire them if they fail. But the family is a radically different sort of institution. Family is for life,<sup>19</sup> and "home is the place where, when you have to go there, they have to take you in," as Robert Frost reminds us.<sup>20</sup> The family is expected to cater to its members throughout their full life-cycles and continually to accommodate their personalities and problems, strengths and weaknesses, whims and vulnerabilities, foibles and fortunes.

Of course, if the notion of justice in the family is stretched to apply to any not-unjust distribution of domestic labor that "works," in the sense that the members of the family accept it and feel comfortable with it, then by stipulation the good family

will be just. But this stipulation comes at a price: the notion of justice as it applies to the institution of the family will be very different from the notion of justice as it applies to all other social institutions. This implies accepting that the family is an exceptional sort of institution, or taking family justice as an exceptional sort of justice, or both.

I suspect that most liberal theorists and some feminist ones will reject both options. They will want to see the family as continuous with all other social institutions and to see the notion of justice applying to it as to all other social institutions.<sup>21</sup> The position I present here in effect embraces both options and sees them as intrinsically connected. I embrace the notion that the family is an exceptional sort of institution, and I maintain that the set of domestic arrangements—the family “deal”—is assessed not for justice but rather for fairness, in the sense expounded here.<sup>22</sup>

## VII. CONCLUSION

The family is constituted on a different foundation than other social institutions. Family fairness, not justice, underlies the working of the good family, via the notion of the considerate family deal.

Social institutions other than the family are assessed for their justice. Within the Rawlsian framework, the assessment is made in reference to a set of principles and practices impartially adopted by the members of the institution with “eyes wide shut”—namely, in an imagined original position, behind a veil of ignorance. Within the family, in contrast, the array of not-unjust and continually readjusted domestic arrangements is being assessed for its family fairness. This assessment, as I have shown, is in principle internal, in the sense that it can be made only by the members of the family themselves. The fair family deal is adopted considerately and partially, with “eyes wide open”—namely, with the family members sympathetically taking into account the full particularity of each of them, and in light of fine-grained comparisons of preferences between them. I conclude that it is the not-unjust, considerate and fair family that is good.

## NOTES

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1. I am here taking issue with Sandel, for whom the appeal to fairness in the “more or less ideal family situation . . . is preempted by a spirit of generosity in which I am rarely inclined to claim my fair share” (Sandel, 1982: 33).
2. Consider: “Many of the individuals who might recognize the inequalities within their [domestic] relationships also consider their circumstances fair. . . . Family members are trading in different currencies.” (Carrington, 1999: 21) This is an observation based on Carrington’s ethnographic study of “family life” among 52 (same-sex) families. The broader point he makes is that the blurring of the two quite distinct categories of fairness and equality is necessary for many in order “to maintain the myth of egalitarianism” (177; see note 22).
3. Aware of this point, I encountered a problem when my twin daughters were little and would ask me which of them I loved more. My strategy was to tell T “I love you most” and then tell R “and I love you even more” and then repeat to T “I love you still more” and so on and on, tirelessly. My sense was that the “proper” answer, namely “I love you both exactly the same,” is not what little children want or need to hear. It is partiality children need, not logic or consistency.
4. Recall Philip Larkin’s immortal lines: “They fuck you up your mom and dad / They may not mean to, but they do; / They give you all the faults they had, / And add some new ones just for you” (1974). But note that this is from the point of view of the children, not the parents. (At the end of the poem he gives his advice—whether sad or tongue in cheek: “Get out as quickly as you can, / And don’t have any kids yourself.”)
5. In a trivial sense everything is generalizable. (Even a proper name, as shown by Quine, can be generalized by means of a series of definite descriptions). But a generalization like: “Every husband who has characteristics a(1), . . . , a(n), and whose wife has characteristics b(1), . . . , b(m), and whose circumstances can be described by c(1), . . . , c(s), and whose past relationship can be described by d(1), . . . , d(r), should do X” is likely to be neither useful nor insightful.
6. Given gender stereotypes, the case would have served as a more poignant example had the Kriegers’ roles been reversed—as relates both to their different patience levels and to their jobs.
7. For the purpose of his “just savings principle” and the cause of intergenerational justice, however, Rawls does allow for ties of sentiment between generations. Each head of family in Rawls’s original position is supposed to care about the well-being of some persons in the next generation (Rawls, 1971: 128, 146, 292; Okin, 1989a: 92). Commentators continue to debate, however, whether care about descendants contradicts the idea of the original position as a device of representing impartial concern.

8. This remains essentially true even after we take into account Rawls's notion of "reflective equilibrium." The method of reflective equilibrium determines a set of principles rooted in the human sense of justice. It is a coherentist method for the epistemic justification of moral beliefs that allows for some give-and-take—but this remains on the level of the principles and beliefs. The give-and-take does not affect the direction of fit that eventually flows from the set of principles, properly adjusted and stabilized, to their application to concrete cases.
9. A distinction is sometimes invoked between the question of justice *in* the family and the question of the justice *of* the family (see Munoz-Darde, 1998). The first concerns, primarily, the division of labor within the family; the second asks whether the very existence of the institution of the family is not an impediment to social justice—for example, because of the way it can be a barrier to equality of opportunity. I am here concerned with the first question only.
10. "In Rawlsian terms, the only thing that can be demanded is . . . that the family should fit together with other main institutions so that the principles of justice operate." (Munoz-Darde, 1998: 347)
11. "Rawls *assumes* that families are just, though he has provided no reasons for us to accept this assumption." (Okin, 1989b: 236)
12. Consider the analogy to trust and distrust: my not distrusting you does not amount to my trusting you (see Ullmann-Margalit, 2003: 60-61).
13. This is the biblical law (see *Numbers* 27:8). The *Mishna* goes further and rules that even if a father wills his property to his daughter his will is null and void. To circumvent this injustice a writ of gift was invented; three cases of such gifts were found among the Judean Desert papyri. (I thank Magen Broshi for help on this point.)
14. As evidence of changing societal norms regarding justice in family matters, consider the recent twist in the struggle against family injustice offered by the British movement "Fathers 4 Justice." "The divorced and separated fathers who belong to Fathers 4 Justice say they hope to accomplish one thing: ensuring they get a fair shake at equal custody of their children. . . . [T]here are many fathers—and the number is growing—who want to see more of their children and are unsatisfied with their custody arrangements. . . . They say judges have been slow to recognize the changing roles of fatherhood, including the fact that 50 percent of the British work force is made up of women. Fathers argue that the system is biased against them. . . . What is really needed, they emphasize, is for the court to presume a 50-50 custody arrangement from the start, and then work from there" (Alvarez, 2004).
15. "The supererogation that is expected in families often occurs at women's expense" (Okin, 1989a: 31 and further references there).
16. On the idea that family members commonly exhibit such higher moral virtues as heroism and self-sacrifice in relation to one another, see Rawls (1971: 129-30, 438-39).
17. Since same-sex families carry an obvious potential to corroborate or undo this hypothesis, many scholars have recently been developing this research agenda. "These scholars offer the lesbi-gay family as a model for the future", notes Carrington. He notes, however, that his research "seriously challenges the effort to place the lesbi-gay family in the vanguard of social change, a model of equality for others to emu-

late. Such assertions are based on the ideology of egalitarianism, not on its actual existence.” (Carrington, 1999: 218)

18. “Okin seems to equate a ‘gender-free’ society with a society of heterosexual couples who (inter alia) share domestic labor. She often treats ‘adult members of the family,’ ‘parents,’ ‘both parents,’ ‘couple,’ and ‘mother and father’ as synonyms” (Kymlicka, 1991: 84).
19. Even if marriage can no longer be assumed to be for life, as it was in previous times (see Okin, 1989a: 32).
20. The fuller quote is interesting in the present context; it is a dialogue between two voices:

Home is the place where, when you have to go there,  
They have to take you in.  
I should have called it  
Something you somehow haven’t to deserve.
21. For Okin the family remains “a peculiarly *preliberal* anomaly in modern society” which would improve if it were to conform to contractual liberal principles (1989a: 122). Kymlicka believes that if one pushes this position to its logical conclusion, one ends up with Hobbesian and Orwellian views that no liberal is willing to endorse (1991: 91-92). Munoz-Darde says that “the only thing that feminists should ask from Rawls is that he should *refrain* from saying too much about the family, and that he should treat it exactly as any other association” (1998: 348).
22. Discussing long-term same-sex families, Carrington observes that “Interestingly, these . . . families conceive of their circumstances as *equal*, although I suspect they really mean *fair*. They consider things fair in light of a whole series of spoken and unspoken matters ranging from the number of hours someone works for wages to the pleasures one garners from domesticity” (1999: 187).

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