



## **DISCUSSION NOTE**

# **BEYOND A STRICTLY POLITICAL LIBERALISM? CRITICAL RESPONSE TO ABBEY**

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## Beyond a Strictly Political Liberalism? Critical Response to Abbey\*

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IN HER RECENT ARTICLE “Back toward a Comprehensive Liberalism?” Ruth Abbey attempts to show that, despite his best efforts, John Rawls’ political liberalism ultimately fails to accommodate feminist concerns for injustices that occur within the family.<sup>1</sup> She suggests that if we are to address injustices of the familial kind, liberalism must be conceived in comprehensive, not political, terms. This paper argues that Abbey is mistaken in these claims, for a strictly political liberalism can accommodate feminist concerns so long as political liberalism is understood in accordance with Rawls’ accounts of the private/public distinction and political autonomy.

Abbey’s argument is quite simple: if liberalism is to confront injustices within the family, it must be conceived (at least partly) in comprehensive terms. In support of this claim, she argues that genuine autonomy cannot be assured if justice as fairness is strictly political. More precisely, she examines whether a sufficient degree of autonomy can be exercised by women in the domestic sphere under the principles of political justice, and, in noting that it cannot, concludes that *political* justice will not ensure that women bear basic rights and freedoms.

A problem with this contention appears almost immediately: Abbey dismisses Rawls’ public/private (and political/non-political) distinction. What Abbey is doing for her purposes is to show how no domestic *domain or sphere* is immune from the principles of justice.<sup>2</sup> But elsewhere she notes that, for Rawls, a “domain” or a “sphere of life” is not “something already given apart from political conceptions of justice . . . but rather is simply the result, or upshot, of how the principles of political justice are applied, directly to the basic structure and indirectly to the associations within it.”<sup>3</sup> In other words, Rawls’ liberalism does not regard the public and private spheres (or the political and non-political domains) as “two separate, disconnected spaces, each governed solely by its own distinct principles.”<sup>4</sup> True, in the scheme of political liberalism, the principles of justice are not

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<sup>1</sup> Ruth Abbey, “Back toward a Comprehensive Liberalism? Justice as Fairness, Gender, and Families,” *Political Theory* 35, no. 1 (2007): 5-28.

<sup>2</sup> *Ibid.*, pp. 6-7, 15, 19, 20-21.

<sup>3</sup> John Rawls, “The Idea of Public Reason Revisited,” in *The Laws of Peoples* (Cambridge, Mass.: Harvard University Press, 1999), p. 161; and his *Justice as Fairness: A Restatement*, ed. Erin Kelly (Cambridge, Mass.: Belknap Press of Harvard University Press, 2001), p. 166. See also Abbey, “Back toward a Comprehensive Liberalism,” pp. 17-18.

<sup>4</sup> Rawls, “The Idea of Public Reason Revisited,” p. 160; and his *Justice as Fairness*, p. 166.

directly applicable to the internal life of families; this may leave room for some families to be organized according to a traditional division of labor.<sup>5</sup> But this does not mean that whatever happens in the sphere of private life should be immune from political justice. So long as women are not treated as free and equal in the so-called domestic sphere, justice as fairness pushes their conditions in a direction of gender equality.

But this begs the question of what exactly is required for persons to be free and equal members of society under political justice. Rawls argues that justice as fairness views citizens as free and equal persons, insofar as they are capable of engaging in social cooperation to maintain an enduring and well-ordered society, and insofar as they are capable of leading a complete life in that society. The former depends on a person's capacity for a sense of justice, which entails "the capacity to understand, to apply, and to act from . . . the principles of political justice that specify the fair terms of social cooperation." The latter ability is related to a person's "capacity to have, to revise, and rationally to pursue a conception of good."<sup>6</sup> People are thus regarded as equal only if they have to a requisite minimum degree the moral power to engage in social cooperation, and they are regarded as free only if they have the moral power to have a conception of good, which normally involves their having deep commitments to communities and associations. The possession of the two moral powers, Rawls believes, is a necessary condition for people to be regarded as free and equal citizens. This condition must be reflected through the application of the principles of justice as fairness – in particular, the first principle of justice<sup>7</sup> – to the basic structure of society which, among other things, includes the family. This is why equal basic rights must be protected as inalienable and inalienable within the family.

Unlike many other feminist liberals, Abbey rightly acknowledges that "Rawls is applying his first principle of justice directly to the family."<sup>8</sup> Indeed, she admits that neither communities nor associations are permitted to violate the basic rights of women (and children) under political justice, since those rights are secured by the first principle of justice. But Abbey suggests that Rawls' argument must extend beyond a strictly political liberalism if women are to enjoy genuine autonomy in the domestic sphere. To support this claim, she notes that the political conception of justice allows for "some traditional gendered division of labor within families . . . provided it is *fully voluntary* and does not result from or lead to

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<sup>5</sup> Rawls, "The Idea of Public Reason Revisited," p. 161. Of course, Rawls argues under what conditions the division in question is permitted. See my discussion below.

<sup>6</sup> Rawls, *Justice as Fairness*, pp. 18-19. See also John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993), p. 19.

<sup>7</sup> The first principle of political justice is: "Each person has the same inalienable claim to a fully adequate scheme of equal basic liberties, which scheme is compatible with the same scheme of liberties for all." Rawls, *Justice as Fairness*, p. 42; and his *Political Liberalism*, p. 5.

<sup>8</sup> Abbey, "Back toward a Comprehensive Liberalism?" p. 18.

injustice.”<sup>9</sup> Abbey thinks that Rawls’ argument for the voluntariness of accepting the division of labor stands in tension with his argument for the protection of women as bearers of basic rights and freedoms only at the level of political liberalism. She thus concludes that Rawls cannot help advocating a comprehensive liberalism in terms of full autonomy.

Since Abbey understands women’s autonomy in the domestic sphere in terms of whether they voluntarily accept a certain form of family, we should consider what Rawls means by (full) voluntariness. While Rawls admits that the determination of voluntary action is a difficult undertaking, he contends that voluntariness should be understood in terms of *reasonableness*: whether an action is voluntary or not falls back upon whether the action is taken under conditions of a fair kind.<sup>10</sup> The implication of this is that voluntariness does not depend on whether a person’s choice is pre-determined by uncontrollable factors, genetic or environmental. In describing the nature of non-public reason, Rawls actually argues that the voluntary acceptance of certain comprehensive views is not entirely free from prior commitments and attachments to them, rather, “regarded as within our political competence specified by basic constitutional rights and liberties.”<sup>11</sup> Note that such rights and liberties are exactly those guaranteed by the first principle of justice as it appears in political liberalism. So if voluntariness implies more than this, then it should be understood not in the sense of reasonableness, but in a more robust sense than Rawls could support.

As I see it, Abbey tends to interpret autonomy, and so voluntariness, in just such a robust sense.<sup>12</sup> In arguing against Rawls’ analogical comparison of the family with other associations, for instance, she suggests a similarity between family membership and membership in society: “our first membership of families is not a consensual act.”<sup>13</sup> She continues:

[a]t a more distant level, even individuals who may be determined to estrange themselves from their biological families carry with them the genetic constitution and propensities toward certain illnesses and so on that derive from membership of

<sup>9</sup> Rawls, “The Idea of Public Reason Revisited,” p. 161, emphasis added.

<sup>10</sup> Ibid., p. 162 n. 68.

<sup>11</sup> Rawls, *Political Liberalism*, p. 222.

<sup>12</sup> Abbey observes that Rawls’ conception of autonomy is close to what Marilyn Friedman calls a content-neutral conception of autonomy. And she claims, “this is still a form of autonomy that should operate in the domestic sphere, and as such it pushes justice as fairness beyond the bounds of a strictly political doctrine.” Abbey, “Back toward a Comprehensive Liberalism?” p. 22. But this criticism of Rawls’ project in terms of autonomy is strange, since full autonomy in political liberalism can be seen as a content-neutral form of autonomy, which requires agents only to possess certain autonomy-competencies and external conditions to foster such competencies, not to act consistently with a comprehensive value of autonomy. For the notion of content-neutral autonomy, see Marilyn Friedman, *Autonomy, Gender, Politics* (New York: Oxford University Press, 2003), pp. 19-25, 189-92. See also Rawls, *Political Liberalism*, pp. 77-81.

<sup>13</sup> Abbey, “Back toward a Comprehensive Liberalism?” p. 13.

a particular biological family. So, entry to one's family of origin is never voluntary for children, and escaping completely either one's family of origin or a family one has chosen is not always possible for adults.<sup>14</sup>

This shows that by voluntariness Abbey means something far more than having the sense of reasonableness; on her argument, making the surrounding conditions fair is not enough for a person's action to be voluntary. This may be the primary reason for her supporting a philosophical and thus (at least partly) comprehensive view of autonomy.

Would such a view of autonomy be plausible for the sake of diffusing the feminist concerns for familial injustices in liberalism? Probably not, because this robust view would compel us to face a plethora of troublesome issues concerning voluntariness, not in the least the question of how it is possible to act in a way that is not at some level socially or genetically determined. While this undertaking might not be completely hopeless, it seems unnecessary if our primary objective is to incorporate the equality of women in the family into liberalism. What is needed is, I believe, to increase justice as fairness for women in all domains, and that is precisely the effect of Rawls' political account of liberalism. Given that his account frees us from the traditional view that the private sphere is exempted from political justice, Rawls' theory promotes gender equality within the family such that all women are protected from any violation of their basic rights and freedoms.

Some feminist liberals may view Rawlsian measures as insufficient to surmount the deeply entrenched barriers to gender equality.<sup>15</sup> Indeed, there can be no denying the fact that the barriers to gender equality stand tall. But before we turn our attention to developing a more comprehensive or radical project, it is worth noting two points. First, the extent to which gender equality is actually promoted under justice as fairness is ultimately an empirical issue: we are not in a position to determine whether the barriers to gender equality would actually be overcome in Rawls' well-ordered society. Second, and more important, Rawls' justice-as-fairness constraints (imposed by the first principle of political justice upon all forms of family) are so stringent that most of the injustices about which many feminists are concerned could not persist. And this is what Abbey espouses as a virtue of Rawls' liberalism: "it is hard to see how a belief in a gender hierarchy mandated by nature could survive the requirement that one's spouse be free to divorce; have equal opportunities in the labor market; be free to vote; enjoy the liberty of conscience; be regarded as a free, equal, and independent citizen; and so on."<sup>16</sup>

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<sup>14</sup> Ibid., p. 14.

<sup>15</sup> See, for example, Susan Moller Okin, "Political Liberalism, Justice, and Gender," *Ethics* 105, no. 3 (1994): 23-43, pp. 35-37; S. A. Lloyd, "Situation a Feminist Criticism of John Rawls' *Political Liberalism*," *Loyola LA Law Review* 28 (1995): 1319-44, pp. 1332-33; and Martha C. Nussbaum, "Rawls and Feminism," in *The Cambridge Companion to Rawls*, ed. Samuel Freeman (New York: Cambridge University Press, 2003), pp. 504-6.

<sup>16</sup> See Abbey, "Back toward a Comprehensive Liberalism?" p. 19.

So my conclusion is that, were Abbey not beholden to the two dogmas as regards the familial justice – the domain-based understanding of the public/private (and political/non-political) distinction and a metaphysical view of autonomy – then she would surely support a strictly political liberalism.

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