

# RAWLS, FEMINIST CRITICISM AND JUSTICE IN THE FAMILY: DO WE REALLY NEED A KITCHEN POLICE?

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*The family is the association established by nature for the supply of man's everyday wants.*

Aristotle

*But then, what is one supposed to call hand-washing of laundry, scrubbing floors, or ironing? The answer is: just women's work. It is not that the state hated women and, therefore, didn't produce machines that would make their lives easier, but rather that there were so many other problems to solve, things to produce. The 'woman question' (if any!) was going to be solved one day, that's for certain.*

Slavenka Drakulic, *How We Survived Communism and Even Laughed*

## Abstract

Justice in the family is an old debate and often considered to be an irresolvable one. Since the family is a space of love and intimacy, it should not be put under any regulations. If this is so, is there any way of achieving justice within the family without interference of the state?

Although he places the family within the umbrella of justice, Rawls' theory was criticized from the feminist viewpoint. The feminist criticism indicates that Rawls did not introduce justice in the family which then makes the well-ordered society unjust and unsustainable, for the family is the primary school of moral development. A theory of justice pledges for the equality of opportunity, a goal that is, according to the feminists, unachievable as long as women bear responsibility for the majority of domestic and dependency work. The other line of feminist criticism, ethics of care, suggests that women's ethical experience cannot be understood solely from the aspect of justice, which calls for the introduction of care. It also states that the theory of justice presupposes care, at least as motivational factor. If this is so, Rawls' theory provides a legitimate space for placement of care into justice. Taken to more practical level, an introduction of care into politics can lead towards gender-free future.

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## 1. INTRODUCTION

There was a one cartoon in the New Yorker magazine which portrayed two women in some work banquet. One of the women was pregnant and the other asked her is she had yet chosen a name for her career obstacle? Regardless of the comic nature of the situation presented in the cartoon, it is true that when it comes to career goals, parenting still presents an obstacle for women's improvement.

From the 70s when it was published until today, *A Theory of Justice* by John Rawls has drawn huge attention, influenced many scholars and in a way signified a revival of political philosophy. After many years, it was the first piece that could fairly stay side by side to the greatest works in political philosophy, such as Rousseau's, Hobbes' and Locke's. Hence, its value and importance is self evident.

The author himself confessed that the theory is not flawless, that it needs to be improved and that he was open to any suggestions and constructive criticism. The book was generally praised but also heavily criticized by his fellow scholars. Criticism arrived from many different standpoints, one of them is feminist. The feminist line of criticism can be divided into two tracks. The first concerns the types of moral agents involved in pre-society state/state of nature. The other objection addresses the problem of unpaid work that takes place in the domestic sphere which is directly connected to the role of the family as *the primary school of morality*, a significant task that Rawls gives to the family. Directly linked to this criticism is the one from the aspect of ethics of care which considers that women's ethical experience cannot be fully understood from the aspect of justice, which is why it argues for the extension of care into justice. In my thesis I will follow this second line of argument. First, I will present placement of the family within Rawls' theory; second, I will outline the main feminist criticisms and arguments to this placement;

third, I will present the criticism from the viewpoint of the ethics of care. Finally, I will present the possible feminist contributions to Rawls' theory which could solve the problem of justice in the family and answer the question *which changes have to be done in order to have internally just family?*

The second line of argument or *the problem of exploitation and domination* as feminists put it, emphasizes the gender division of labor and the problem which contractarian theorists did not question: justice within the family. In this sense Rawls' theory is a benchmark, it is the only theory that considers the family a part of justice and therefore, in some sense it is considered to be a part of public sphere or at least an institution that is important for the reproduction of society. Since the family is put under the umbrella of justice and its importance for the future of the public sphere is acknowledged, it is important to address the question of its internal justice.

The former contractarian theorists omitted the family from their theories primarily because of the historical circumstances that they were part of, but also because of private/public distinction which did not allow interference into the private sphere, and in which the public sphere is ordered according to principles of justice, leaving the private sphere omitted from its structure. Later on, the feminist slogan "personal is political" will open a space for questioning of the domestic sphere, its power relations and its justness.

In *Theory of Justice*, the society is ordered on just principles. Central to Rawls' theory of justice is a heuristic device, *the original position* in which the parties that are about to decide on principles of justice are placed. The parties are also placed behind the *veil of ignorance* which enables them to be impartial while making their choices. This means that in deciding on principles of justice the parties have no knowledge of their individual characteristics, their social position, race, ethnic group,

strength and intelligence. This why they have no basis for bargaining since there is nothing to bargain with.

The original position as presented in *Theory of Justice* was questioned by feminists from the gender viewpoint: what is the true nature of the parties in the original position and are the parties behind the veil of ignorance aware of their sex, or is it one of the characteristics that is covered by the veil? Many feminists argued that the parties in the original position are actually heads of the households (who are primarily men and only in exceptional cases women) and asked for its revision. In his later works, namely in *Political Liberalism*, Rawls answers to the part of feminist criticism. Instead being heads of the households, the parties in the original position are defined as rational autonomous representatives that are free and equal moral persons. Because of the feminist criticism, in his later works Rawls will stress that sex is also covered by the veil of ignorance<sup>1</sup>.

The family is a part of the basic structure of society, it sets the background conditions within which the future action will take place: "Theorizing justice should focus primarily on the basic structure, because the degree of justice or injustice of the basic structure conditions the way we should evaluate individual interactions or rules and distributions within particular institutions"<sup>2</sup>. In this sense, the basic structure is the bottom line of just society:

The role of the institutions that belong to the basic structure is to secure just background conditions against which the actions of individuals and associations take place. Unless this structure is appropriately regulated and adjusted, an initially just social process will eventually cease to be just, however free and fair particular transactions may look when viewed by themselves.<sup>3</sup>

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<sup>1</sup> "However, he presents this change only as a minor technical reconsideration of the original position, and not as a modification required by coherence, in order not to leave the family opaque to claims of justice", Mundos-Darde, V. (1998), "Rawls, Justice in the Family and Justice of the Family", *The Philosophical Quarterly*, Vol. 48, No.192, 340.

<sup>2</sup> Young, I. M. (2006), "Taking the Basic Structure Seriously", *Perspectives on Politics*, Vol. 4/No.1, 91.

<sup>3</sup> John Rawls, *Political Liberalism*, (Columbia University Press, New York, 1993), 266.



Rawls only assumes that the family is just, which is why it could be placed in the basic structure. With this assumption, Rawls ignores the distributive aspects of family life, namely the division of domestic labour and its consequences in the public sphere. The main feminist argument is that this makes the family incapable of being the primary school of moral development.

For Rawls, the general aspect of the basic structure of society is the social division of labour. The principle which regulates the issues of justice within the division of labor is the difference principle or *fair equality of opportunity*. If all the positions in the society should be accessible to everybody under fair equality of opportunity, then this procedure for allocation of positions should not be jeopardized by race, gender or family origin. The 'violation' of the difference principle takes place in family, women are responsible for the majority of domestic labor which makes them less capable of doing paid work, and in the end disables them from fulfillment of their interests and themselves as individuals.

In his later works, *The Idea of Public Reason Revisited* and *Justice as Fairness: A Restatement*, Rawls clarifies the role of the two principles of justice and their relation to the family. The two principles of justice are necessary to ensure the procedural justice in the division of labour, which all takes place within the basic structure. Since the family is a part of the basic structure, the two principles of justice should apply to it, but they do not entirely. When it comes to the explanation of the application of two principles of justice on the family, Rawls remains vague and unclear.

The part of the new and improved theory of justice that should indeed please the feminists is Rawls' claim that political liberalism does not regard the political and nonpolitical spheres as two separate disconnected spaces. Since the two principles

of justice apply directly or indirectly to the whole basic structure, there is no need for the separation because all institutions are technically arranged on the same basis.

Therefore, since the principles of justice are indirectly applied to the family, Rawls assumes it to be just and does not address any intra-family questions, like the gender division of labor. The question is if he did address intra-family relations, would the findings be suitable to the theory of justice?

Rawls does not address intra-family relations because he thinks they are based on natural sympathy and love and not on justice. Okin states that this does not explain why one should object the idea of justice in the family: "If the family, unlike the other voluntary associations, is both *part of the basic structure of society and the place where a sense of justice is first developed in the young*, then does it not need to be *internally just*?"<sup>4</sup> By saying that justice should be placed in the family, Okin states that it does not include law enforcement or 'kitchen police' and it also does not exclude love, altruism and generosity as family qualities.

One of the approaches to the family issue is given by the ethics of care, which is closely linked to *the problem of exploitation and domination*. Briefly, the ethics of care (usually perceived as 'woman's ethic') is based on the fact that at some stage of our lives we are utterly dependent on somebody else's help, even more than that, we do not require just help, but a constant relation with the care-giver. Ethics of care is linked to the emotions, relational ties, nurturing and caring, which are all values of the private sphere. On the opposite side there is man's morality which is constituted on reason, on the Kantian principle (who has, besides Mill, influenced Rawls' work

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<sup>4</sup> Okin, S.M. (2005), "Forty acres and a mule for women: Rawls and feminism", *Politics, Philosophy and Economics*, Vol. 4, No. 2, 245.

the most)<sup>5</sup> of universality and justice which is all placed in the public sphere, in the place of politics. Okin notices that liberal political theory is deceptively individualist:

It claims to have as its subject human individuals who can exist independently of each other. They are never helpless infants; they do not suffer from major or less than passing disabilities, mental or physical; they do not seem to pass into any kind of dependency on others in old age.

...because of unmentioned females in their households, the views and the mothers, that these 'male heads' exist at all, that they are nourished so as to grow up, and that they appear each day in the marketplace, workplace, and political spaces of society clean, fed and dressed.<sup>6</sup>

Therefore, it can be argued that with their dependency work, women have contributed to society, but it was unrecognized because of the public/private distinction. Since Rawls states that in his work this division is abolished and since he places the family under the sphere of justice, it is plausible to say that there is a necessity to address its internal justness.

The tradition that women attend those in need was argued by feminists, who think that this kind of labor is seen as a part of women's family obligations justified by tradition. Furthermore, this gendered nature of dependency work has excluded men from participation within it, which is why equal division of dependency work was never considered in the discussions of political and social justice.

The claim here is that a society cannot be well-ordered, that is, cannot be one in which all its members are sustained and included within the ideal of equality, if it fails to be a society characterized by care. For a society to be characterized by care, we need something other than the affirmation of the importance of family integrity. We need structures that will assure that dependency work, whether done in family or other social institutions, can be carried out under nonexploitative conditions.<sup>7</sup>

Therefore, by being responsible for the dependent members of the family, women do not have an equal approach to the positions within the society. The role of the

<sup>5</sup> The parties in the original position, while they choose the principles of just society, have in mind their extended family, which basically mean that they act on the principles of ethics of care and not ethics of justice. This questions the very possibility of the contract and/or provides an evidence for the artificiality of the public/private dichotomy.

<sup>6</sup> Okin, "Forty acres and a mule", 233-234.

<sup>7</sup> Patrice DiQuinzio and Iris Marion Young, *Feminist Ethics and Social Policy*, (Indiana University Press, 1997), 17, 18.

primary caretaker is incompatible with many jobs which is why it influences the very choice of education. Moreover, “as long as basic institutions treat care work as primarily the private responsibility of families, social policy will pay insufficient attention to it”<sup>8</sup>. Woman and man enter marriage and work market on an unequal basis. This results in power relations within the family that do not favour women and which leave all dependency work to women. This is evident in Rawls’ theory in which women and children are always put together, which places the woman in the role of the primary parent and consequently, in the role of the primary caretaker.

The traditional picture of a family is ‘working father, home mother’ which assumes that women devote primary energies in taking care of children and other dependent members, while ideally men are the primary income generators for family. This structure of sexual division of labor has far-reaching implications on the worth of different kinds of labor, sexual segregation and gender stereotyping in public paid occupations. Therefore, the division of domestic labour has far-reaching implications in the public sphere. The unjust family relations have their spillover effect in society.

It is the common standpoint of feminists that, in order to change the unjust family relations, it is necessary first to change the relations within the public sphere, namely at the working place. The expected result is that the ‘new fair work conditions’ will find their way to the family. Since the interaction between public and private domain is not a one-way process, it is necessary to extend certain amount of justice in the family.

The societies which have larger proportion of unpaid women’s labor than men’s labor (in fact this kind of labor is often not acknowledged as one), result in

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<sup>8</sup> Young, 93.

differences in earnings, with economic dependence of women on men, which affects power relations within the household.

Moreover, today there is significant number of divorces. The division of labor in the typical family leaves the divorced woman impoverished, mostly with children. This can become a social problem if the child support is not regularly paid, which harms children as well as women. This shows the importance of equality of opportunity for women and is an additional reason to rethink the family as a just institution.

In his later works, Rawls accepts some part of feminist criticism and states that “a long and historic injustice to women is that they have borne, and continue to bear, an unjust share of the task of raising, nurturing, and caring for their children”<sup>9</sup>. Rawls is also aware of the inequalities that take place in the case of divorce and the consequences that it has on children, on their ability to acquire the political virtues that are necessary for the future citizen of a well-ordered society. This is why Rawls proposes an introduction of the law that would count a wife’s work in raising children, which would entitle her to an equal share in the husband’s income. In the case of divorce, “she should have an equal share in the increased value of the family’s assets during that time”<sup>10</sup>.

These innovations in the theory of justice resolve only half of the problem. The problem that still remains unquestioned is the one of equal division of house work, which has implications on the equality of opportunity, which questions the very ability of the family to fulfill its role as the primary school of morality.

Rawls addresses this problem briefly, states that political liberalism has to allow some traditional gendered division of labour within families, namely the ones

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<sup>9</sup> Rawls, *The Idea of Public Reason Revisited*, 161.

<sup>10</sup> *Ibid*, 163.

based on religion, but under condition that this kind of work is *fully voluntary and does not result from or lead to injustice*. Returning to the family, we may question why it is assumed to be just in spite of its limiting effects on the principle of fair opportunity? One of the possible answers lies in its importance as the primary institution of moral development.

The family should be some sort of school of justice in which children should be able to learn how to be just, which is required since they will once be citizens of a just society. For the moral development of a child it is important to grow up in a family that works on the basis of justice and reciprocity, rather than domination or manipulation and one-sided self-sacrifice. Therefore, a family must be just in order to have moral individuals and in the end just society. If this is so, the family cannot be nonpolitical since it is indirectly involved in the public sphere, moreover, it reproduces it.

In his later works Rawls accepts some parts of feminist criticism and admits that theory of justice was not attentive enough to race and gender. The author deals more with the position of women within a just society, makes sure that they have the same liberties as men and strengthens women's role as citizen. On the other hand, the author did not deal enough with the justice in the family, he merely explained its special place within the basic structure and justified why the principles of justice cannot be applied within the family (which is for this purpose compared to associations in an implausible way).

If we take this whole problem to a more practical level, one of the answers to it can be provided by ethics of care. In today's modern societies, the nature of work and life in general is changed. The working and the school hours are longer, which has changed habits and the ways of life. Majority of activities that were once done at

home are now being done outside of it, whether it is clothes washing, eating or child rearing. This way care has exceeded the private sphere and that way has become a political question. At the same time, politics has transgressed the limits of parliament and now exists on much higher levels, which makes the problems of community secondary. This opens a space for introduction of new ways of (self)governing. One of the possible solutions is an extension of the ethics of care into the public sphere. This is legitimate because care itself has become a public matter. Ethics of care with its general notions of relationality, interdependence and attention calls for the concept of caring citizenship, which would influence the policy-making process. The caring citizenship would exist within the civil society and would bring the politics to its roots-the good governing.

Therefore, if the only problem that stands in the way of the family's justness is domestic work (which is at the same time the problem that stands in the way of equality of opportunity), then ethics of care could be the answer. Given the present historical conditions and the ways of life, it might be the only way of placing justice into family.

Women do not occupy the places of power in politics and society in general because certain positions are not available to them. They are not available since there is a choice to be made: whether to be somebody's mother or to pursue fulfillment in chosen profession. But certain positions are not available because of the 'family spillover effect' that, based on woman's ability to give birth, puts her in the position of the primary caretaker which results in the inequality of opportunity. This inequality is reflected in the public sphere, namely in gender stereotyping of paid occupations.

The question is why does Rawls assume the family to be just? Since the parties in the original position are already deciding on the basis of justice, why do they not choose the family that they want to live within? Furthermore, since they are not aware of their gender, would they choose this traditional family? The answer is no, because that kind of family would not be able to satisfy the two principles of justice, which are the bottom line of Rawls' theory.

The question of justice in the family has been a matter of academic debate for quite some time, and it seems that a consensus on it is unreachable. On more practical level, the family with its division of domestic labour and dependency work is an obstacle to gender equality, especially in the work market. Some might say that if we want to introduce justice into the family that then it would no longer be a place of privacy and intimacy and that the only way to do it is to extend the authority of the state into the private sphere. The question is then, in order to have a just family, do we really need a kitchen police?



## 2. RAWLS

Since the publication of his capital work *A Theory of Justice*, John Rawls kept developing and improving his theory through his further works. Most of the innovations were made under the influence of scholar critique, among which the feminist one. In order to explain Rawls' treatment and the placement of the family in his theory, it is necessary to expose the development of the family position within the theory of justice in his further works and related feminist criticism, which I will elaborate on it further in the following chapter.

The first book published was *A Theory of Justice* in 1971, which was followed by *A Theory of Justice: A Restatement* in 1999. This revised edition incorporates changes that Rawls made for the translated editions of *Theory of justice* [TJ]. In TJ, Rawls takes the familiar device – the social contract and offers his approach to the problem of distributive justice. The second book which was important for the development of Rawls' theory was *Political Liberalism* [PL], published in 1993. In PL, Rawls deals with the functioning of the well-ordered society and introduces the idea of the *overlapping consensus* and the *idea of public reason*. The third book was *The Law of Peoples* published in 1999, in which the author further develops two previously published essays *The Law of Peoples* and *The Idea of Public Reason Revisited* [IPPR]. In the second Rawls dedicates one chapter to the placement of the family within the theory of justice. The last book important for the treatment of the family is *Justice as Fairness: A Restatement* [JFR] and it represents a clarified and reorganized short summary of the main arguments of Rawls' theory.

## 2.1. A Theory of Justice

In this work Rawls develops his theory of justice which he called *Justice as Fairness*. The author uses social contract as a device to address the problem of distributive justice. The equivalent of the pre-social state of nature of traditional contractual theorists is the *original position*, a heuristic device in which parties are placed in order to decide upon the principles of the future just society. The parties, which are rational and mutually disinterested, are placed behind the *veil of ignorance* that prevents them from knowing their basic characteristics (place in the society, social status, fortune in distribution of natural assets, intelligence, strength, their conceptions of good or their special psychological propensities) which ensure that no one is privileged by the chosen principles. The subject of justice or the subject that will be arranged by the chosen principles of justice is the basic structure of society.

For us the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages and disadvantages from social cooperation. By major institutions I understand the political constitution and the principal economic and social arrangements. Thus the legal protection of freedom of thought and liberty of conscience, competitive markets, private property in the means of production, and the monogamous family are examples of major social institutions.<sup>11</sup>

The basic structure of society is the primary subject of justice because of its far-reaching implications on the social structure. The institutions in the basic structure contain different social positions and people born into different positions have different life chances. This causes deep inequalities which should be “corrected” by the principles of justice in the well-ordered society. Rawls believes that the following two principles would most likely be the first that parties in the original position would agree upon:

First: each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberty for all.

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<sup>11</sup> John Rawls, *A Theory of Justice: Revised Edition*, (Oxford University Press, 1999.), 6.

Second: social and economic inequalities are to be arranged so that they are both (a) to the greatest benefit of the least advantaged, consistent with the just savings principle, and (b) attached to offices and positions open to all under conditions of fair equality of opportunity.<sup>12</sup>

The first one is known as the liberty principle, it secures basic liberties such as political liberty, freedom of speech and assembly, liberty of conscience and freedom of thought, freedom of person, etc. The second one is known as the difference principle and it applies to the distribution of income and wealth. This distribution does not presuppose equality but it must be to everyone's advantage, and it implies that all positions in the society are accessible to all under equal conditions.

The second principle should reduce the influence of the "natural lottery" on the distributive shares, meaning that chances to achieve a certain position in the society should not depend upon class position that one is born into with a certain amount of gift and talent. Therefore, the difference principle is to secure the equality of opportunity. Rawls admits that this principle can be only imperfectly carried out as long as some form of the family exists: "The extent to which natural capacities develop and reach fruition is affected by all kinds of social conditions and class attitudes. Even the willingness to make an effort, to try, and so to be deserving in the ordinary sense is itself dependent upon happy family and social circumstances."<sup>13</sup>

Therefore, the family is a direct obstacle to the equality of opportunity. The way that children are nurtured has a direct impact on the development of their natural capacities, especially when it comes to the upbringing of girls. If they are taught to be obedient, passive and that their primary goals should be accomplished within the sphere of the family, then it is naïve to talk about the equality of opportunity, since their opportunities are different and already given. Furthermore, it is argued by the

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<sup>12</sup> *Ibid*, 266.

<sup>13</sup> *Ibid*, 64.

feminists that the equality of opportunity cannot exist as long as women are responsible for the majority of domestic work and as long as they are considered to be, or in case they are not married, are expected to be, the primary caretakers.

An addition to the second principle says that the whole society including the least favored should benefit from certain restrictions on equality of opportunity and it also emphasizes the priority of fair opportunity over the difference principle. The question is then, what are the benefits for women in the traditional family, that Rawls is obviously referring to, since they are least advantaged? And if the equality of opportunity is the most important principle, why it is not applied to the family? Therefore, is the second principle applied to the family at all? Rawls will partially find a way out from this mess in *PL* with the distinction of the comprehensive and political liberalism. The final explanation of the specific family position in the basic structure is given in the *Justice as Fairness: A Restatement*. In *TJ*, Rawls simply states that he *will not pursue these complications further*.

The other aspect of the original position that is important for the family debate is the nature of the parties in the original position. Rawls states that parties in the original position are the heads of the family which, while deciding on the principles of the just society, have in mind their immediate descendants. The feminist criticism refers to this formulation from two viewpoints: first, although the head of the family does not necessarily need to be a man, it is so in the majority of cases, which is why the nature of the parties in the original position should be changed; and second, if the parties in the original position have in mind their future extended families, they are unable to decide purely on the basis of reason, since affectionate ties are involved. Under the influence of feminist criticism, Rawls will change the formulation of the parties in the original position as heads of the family in 1975. In one of his

articles, by stating that they are the representatives of society. In the same article Rawls added a person's sex to the list of characteristics that are covered by the veil of ignorance in the original position. I will return to this point in the chapter on feminist criticism and in the chapter on ethic of care.

The most important role that is given to the institution of the family is the one of the primary school of moral development. The way to reproduce well-ordered society is through the morality of its citizens. In order to adopt the needed morality, Rawls has developed a three-staged course of moral evolvement: morality of authority, morality of associations and morality of principles. Each of these stages is summed up in one of the three psychological laws, and the first of them refers to the family: "Given that family institutions express their love by caring for his good, then the child, recognizing their evident love of him, comes to love them".<sup>14</sup>

A child obtains its first knowledge within the family and is not competent or in a position to question the validity of the content that it is adopting. This is why Rawls expresses his doubts in the correctness of family education, but once again he bypasses this problem saying that "since we are assuming that the society is well-ordered we may suppose, so as to avoid needless complications, that these percepts are on the whole justified".<sup>15</sup> Therefore, Rawls admits that the form of the family as he uses it is ideal since his whole theory is idealistic, and that the possibilities for complications in practice are numerous. Because of the ideal nature of his theory, he assumes that in some form it is just. Not only does Rawls assume that the family is just, but he seems to state that every family is a happy and loving one. It is the mutual love and care that develop the "first-stage-morality" in the child. By the reciprocal feelings of love the child trusts its parents, has confidence in its

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<sup>14</sup> *Ibid*, 429.

<sup>15</sup> *Ibid*, 405.

surroundings and later on, develops a sense of competence and self-esteem. This early moral development is crucial for the acquisition of the second and the third stages of morality, which then enables the person to be a fully functional citizen of the well-ordered society.

Does this assumption make the family competent to be the primary school of moral development and to carry the burden of the reproduction of the just society? This question sums up the best known feminist criticism of Rawls' theory; the family that is not internally just cannot contribute to moral development. If the family is not just, the well-ordered society can last only to one generation.

The whole theory of justice rests upon the morality of the citizens of a just society: "A society regulated by a public sense of justice is inherently stable...this inherent stability is a consequence of the reciprocal relation between three psychological laws".<sup>16</sup> Rawls once again assumes that persons with a developed sense of justice and confidence in their self-esteem will care for their children. The common feminist response to this is that sense of justice will be more difficult to develop in a family that works on the basis of one-sided sacrifice and domination.

The family is not an important part of *A Theory of Justice*, it is mentioned sporadically several times although the future of the just society rests upon it. In certain moments, it seems that Rawls is aware of the inconsistency of his theory when it comes to the family, but on every occasion he overrides the problem. He acknowledges the influence of the family on the equality of opportunity and at one point asks *is the family to be abolished then?* It seems that the idea of equality of opportunity strives to this direction. Hopefully, that will not be necessary.

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<sup>16</sup> *Ibid*, 436.

Within the contract theory tradition, this theory represents a benchmark because it places the family under the sphere of justice, therefore under the public sphere. What confuses is the specific position of the family, since it *is* the private sphere, and yet it is placed in the public one at the same time. This placement of the family in the sphere of no man's land is not fully elaborated within Rawls' theory, especially in *A Theory of Justice*.

## 2.2. Political Liberalism

The problems that Rawls addresses in *PL* are not directly linked to the problem of justice in the family, since the author makes certain changes in the basic structure. The only direct reference to the family takes place in the introduction, where Rawls merely mentions that one of the major issues not addressed in both of his works is "the justice of and in the family, though I do assume that in some form family is just".<sup>17</sup>

Another reference connected to the family is the one on gender equality. Rawls states that it could be achieved by a simple legal act: "The same equality of the Declaration of Independence which Lincoln invoked to condemn the slavery can be invoked to condemn the inequality and oppression of women".<sup>18</sup> This claim will be criticized by feminists, among others by Susan Moller Okin on the basis that formal freedom does not ensure equality. I will elaborate on this further in the following chapter.

Apart from more practical viewpoint of *PL* than the one of *TJ*, the main innovation that influences the family debate is the difference between comprehensive and political liberalism. In *PL* Rawls addresses the problem of the

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<sup>17</sup> John Rawls, *Political Liberalism*, (Columbia University Press, 1993.), xxix.

<sup>18</sup> *Ibid.*

application of *TJ* in the multicultural democratic society. As he puts it, the idea of the well-ordered society is unrealistic, since its citizens seem to endorse one moral conception – two principles of justice. This situation is not possible in the real life, which is why Rawls introduces the distinction between comprehensive and political liberalism. According to that distinction, the just society as portrayed in the *TJ* was ordered on the basis of comprehensive liberalism since it followed only one moral doctrine, justice as fairness. Modern society is created out of the pluralism of incompatible comprehensive doctrines, which Rawls calls reasonable pluralism of both religious and nonreligious doctrines.

Political liberalism applies to the basic structure of society only, it does not rely on any comprehensive doctrine and it expresses fundamental ideas that are contained in society's political culture, therefore its principles are purely political. On the other hand, comprehensive liberalism has a tendency to cover the entire life, whether it is moral or religious it orders a certain way of life. Political liberalism applies to the public domain and comprehensive liberalism applies to both private and public spheres. How is then political cooperation possible?

Rawls defines comprehensive liberalism as reasonable, which enables the existence of the *public reason* - the common reason of all citizens in the pluralist society as opposed to the nonpublic reason, which is endorsed by citizens as members of certain religious associations or devotees of moral/philosophical doctrines. The existence of the common political culture which is ensured by the application of the political liberalism to the basic structure, additionally ensures the existence and application of the public reason. This cooperation of the people that follow different comprehensive doctrines is possible because of *overlapping consensus*, which ensures a consensus when it comes to political action.



What changes does this distinction bring to the treatment of the family? The feminist criticism denies the applications of political liberalism on the family since its principles are purely political, which make them unusable in the private sphere of the family. Furthermore, it seems that by distinguishing between political and comprehensive liberalism, political principles are applied to the family since it is a part of the basic structure, while at the same time the family is a place where comprehensive liberalism should be practiced. Therefore, the problem of the placement of the family continues, since at the same time it is and it is not the part of the public sphere. The family is under the sphere of justice, but its principles do not apply to it since it is the private sphere.<sup>19</sup> This inconsistency remains unsolved in *PL*. In his further works, Rawls will explain the non-existence of the public/private distinction, which will then enable the application of the principles of justice on the family, but only indirectly. Although this innovation should indeed please the feminists, for them it still fails to resolve the problem of the equality of opportunity. This is why the feminist criticism of Rawls continues.

### 2.3. The Idea of Public Reason Revisited in The Law of Peoples

In the second part of *The Law of Peoples*, the *IPRR*, Rawls dedicates one chapter –On The Family as Part of the Basic Structure – to clarifying the placement of the family in *Justice as Fairness*. This chapter is also the response to feminist criticism.

The family is placed in the basic structure because of its role in production and reproduction of society and its culture:

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<sup>19</sup> In his further works Rawls' explanation remains vague when it comes to the placement of the family within basic structure, and reluctant when it comes to application of the principles of justice on it. It could be concluded that the first principle of justice is applied to the family directly, meaning to its internal structure, while the second principle is applied indirectly: since the family is a part of the basic structure both of the principles apply to it, except that the second principle is not applied to it internally.

Central role of the family is to arrange in a reasonable and effective way the raising of and caring for children, ensuring their moral development and education into the wider culture. Citizens must have a sense of justice and the political virtues that support political and social institutions. The family must ensure the nurturing and development of such citizens in appropriate numbers to maintain an enduring society.<sup>20</sup>

After emphasizing the importance of reproductive work, Rawls continues by explaining that these requirements place constraints on the way that such nurturing should be conducted, since in the sphere of the family the elders have moral and social authority. Since the whole nurturing process is intimate, the principles of justice cannot be directly applied to it. Rawls continues by saying that principles of justice apply to the family indirectly, since it is part of the basic structure, but they do not apply to the internal structure due to the previously mentioned constraints:

Political principles do not apply directly to its internal life, but they do impose essential constraints on the family as an institution and so guarantee the basic rights and liberties, and the freedom and opportunities, of all its members. This they do, as I have said, by specifying the basic rights of equal citizens who are members of families. The family as part of basic structure cannot violate these freedoms.<sup>21</sup>

This way Rawls ensures the political equality but it still remains implausible to say that wives have the same opportunities as their husbands. Furthermore, if the principles of justice apply indirectly to some institutions, then it can be argued that there is still a possibility for the violation of the second principle the family.

This claim represents his answer to the feminist criticism which states that the family is not just since the two principles do not apply to it, especially the equality of opportunity. Rawls' standpoint on this is that since the two principles of justice indirectly apply to the family, *it is therefore in some form just*.

In order to explain this specific nature of the family, Rawls compares it to other associations, such as churches, universities, professional or academic associations.

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<sup>20</sup> John Rawls, *The Law of Peoples*, (Harvard University Press, 1999.), 157.

<sup>21</sup> John Rawls, *The Idea of Public Reason Revisited*, (Harvard University Press, Cambridge Massachusetts, 1999), 159.

The principles of justice do not apply to the internal life of these associations, but they do impose certain constraints on them, meaning that they do guarantee the basic rights and liberties to their members. This is why the family cannot violate these freedoms, which according to Rawls is enough to secure the equality and independence of women.

Rawls' reluctance to apply the two principles of justice directly to the family could be explained by his commitment to *reasonable pluralism*, a term that he introduces in *PL*. and that leaves enough space for people to choose their way of life. Thus, the comparison of the family with associations also seems to defend or at least tries to be consistent with reasonable pluralism. This is why political liberalism leaves enough "room for a free and flourishing internal life appropriate to the association in the question. Here again we see the need for the division of labour between different kinds of principles. We wouldn't want political principles of justice – including principles of distributive justice – to apply directly to the internal life of the family".<sup>22</sup> In other words, as long as family members do not violate two principles of justice and continue to fulfill their role as reproducers of the society, they are free to live the way they choose. An additional explanation to the indirect application of the principles of justice is the absence of the public-private distinction: "political liberalism...does not regard the political and the nonpolitical domains as two separate, disconnected spaces, each governed solely by its own distinct principles".<sup>23</sup> Differently put, this means that the family is political and it seems that principles of justice developed for the public sphere fully apply to it.

The feminist criticism emphasized the fact that membership in associations is purely voluntary unlike the membership in the family that one enters by birth. Also,

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<sup>22</sup> *Ibid*, 159.

<sup>23</sup> *Ibid*, 160.

the associations that Rawls compares the family to are not a part of the basic structure. Therefore, the feminists state that this argument does not clarify the position and treatment of the family.<sup>24</sup> Furthermore, since Rawls grants the protection of basic liberties within the family, it seems that the first principle of justice is directly applied to it. Although the absence of the private/public division grants the application of both principles of justice to the family, it is still hard to see the application of the difference principle and the alleged equality of opportunity. This disables the family of being responsible for the reproduction of the well-ordered society, especially in the moral sense. Rawls opts for legislation that should regulate gender equality, so it can be said that certain equality of opportunity exists but it is not guaranteed since it usually depends on individual choices and on the expectations of social context.

Rawls acknowledges *a long and historical injustice to women*, since “they have borne, and continue to bear, an unjust share of the task of raising, nurturing and caring for their children”.<sup>25</sup> This is why he advocacies for the laws that would equally treat both spouses in the case of a divorce and that would count in the women’s work in child rearing (this should entitle her to an equal share in her husband’s earnings)<sup>26</sup>. But continuing to be faithful to the concept of political liberalism, Rawls states that just society must approve of some traditionally gendered labour within families, in case if certain division is based on religion, is fully voluntary and does not result from or lead to injustice. With this statement Rawls strengthens the conception of political liberalism by establishing the family as an autonomous space in which free and equal adults can follow their private conception

<sup>24</sup> “The notion that families are not distinct from other voluntary institutions is also completely inconsistent with the crucial place that supposedly just families play in Rawls’s theory of early moral development”, Okin, S.M. (2005), “Forty acres and a mule for women: Rawls and feminism”, *Politics, Philosophy and Economics*, Vol. 4, No. 2, 241.

<sup>25</sup> *The Law of Peoples*, 160.

<sup>26</sup> This standpoint is an adoption of Okin’s criticism as presented in her book *Justice, Gender and Family*.

of good. In the light of religious liberties this rule is more than welcome, but the dependency work that takes place under the justification of religious liberty is in minority, which leaves the majority of secular families or the ones whose religion does not require subordination, outside of the scope of principles of justice.

In another place of *IPRR*, Rawls mentions the family in a slightly different context, the one on state's interest in the certain form of the family that will enable normal functioning and reproduction of society.

The government would appear to have no interest in the particular form of family life, or of relations among the sexes, except insofar as that form or those relations in some way affect the orderly reproduction of society over time. Thus, appeals to monogamy as such, or against same-sex marriages, as within the government's legitimate interest in the family, would reflect religious or comprehensive moral doctrines. Accordingly, that interest would appear improperly specified. Of course, there may be other political values in the light of which such a specification would pass muster: for example, if monogamy were necessary for the equality of women, or same-sex marriages destructive to the raising and educating of children.<sup>27</sup>

Therefore, the reproductive role of the family, in a biological sense, is emphasized and might reveal the author's tendency towards traditional family. In other parts of his work, Rawls seems to be open to non-traditional family forms, although that advocacy can also be understood as a commitment to political liberalism, namely reasonable pluralism. This ambivalence is present in his other works, although reasonable pluralism has to secure the freedom of life choices. The reason why one gets the impression that Rawls seems to argue for the monogamous family is that it is the only one that can reproduce society.

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<sup>27</sup> *The Law of Peoples*, 147.

## 2.4. Justice as Fairness: A Restatement

This book presents a short summary of the main points of Rawls' political philosophy in which he responds to the criticisms of *TJ* and develops further his theory. Most of the arguments on the family issue were already given in previous works, which is why I will here introduce only the new clarifications. As in previous work, Rawls here devotes one chapter to the family. Here the author clarifies his position on same sex marriages:

The family must fulfill this (reproductive, own remark) role in appropriate numbers to maintain an enduring society. Still, no particular form of the family (monogamous, heterosexual, or otherwise) is so far required by a political conception of justice so long as it is arranged to fulfill these tasks effectively and does not run afoul of other political values.<sup>28</sup>

Therefore, if these non-traditional families are consistent with the family life that presupposes the education of children which will enable them to be functional participants of the well-ordered society, they are fully approved.

Furthermore, Rawls responds to the feminist criticism of the injustice within the family in the following manner:

Political principles do not apply directly to its internal life but they do impose essential constraints on the family as an institution and guarantee the basic rights and liberties and fair opportunities of all its members. This they do, as I have said, by specifying the basic claims of equal citizens who are members of families. The family as part of basic structure cannot violate these freedoms. Since wives are equally citizens with their husbands, they have all the same basic rights and liberties and fair opportunities as their husbands; and this, together with the correct application of the other principles of justice, should suffice to secure their equality and independence.<sup>29</sup>

This argumentation does not fully satisfy the feminist standpoint. It seems that Rawls' intention was to emphasize the equality between men and women as citizens, which is not questionable, and not to respond to the problem of division of

<sup>28</sup> John Rawls, *Justice as Fairness: A Restatement* (The Belknap press of Harvard University Press, 2001), 163.

<sup>29</sup> *Ibid*, 164.

domestic labour which puts women in the role of the primary caretaker and leads to inequality of opportunity. Furthermore, the unjust division of domestic labour has far-reaching implications on the work market. It is the feminist standpoint that offering the women the same political powers as men does not fully realize the liberal project and that therefore some extension of liberal values to the domestic sphere is necessary. This is also one of the standpoints of ethic of care, which will be fully presented in the third chapter.

### 3. FEMINIST CRITICISM

In this chapter I will present the feminist criticism the majority of which criticized Rawls within his theoretical framework. The authors which whose I will here present are Susan Moller Okin, Deborah Kearns, Veronique Munoz-Darde and Iris Marion Young. Apart from Kearns, all of these authors criticized Rawls by adopting his theory and offering plausible criticism that could improve his theory. Kearns on the other hand criticized Rawls from the standpoint that does not adopt his framework. She merely pointed out the problems and addressed the relation between rationality and affection that takes place in the family. Among these authors, Okin's work represents the most thorough analysis of Rawls' work from the feminist perspective. In the first subchapter I will present Okin's work since it is the most expansive work in the field, and in the second subchapter I will list down all the other authors that contributed to this debate.

#### 3.1. Susan Moller Okin

Susan Okin's *Justice, Gender and Family* written in 1989 is one of the most important feminist political philosophy books. The book provides a feminist critique of modern political theories, among them the one of John Rawls and his book *A Theory of Justice*. In this subchapter I will introduce Okin's criticism of Rawls' theory in her book but also in the articles which followed. I will also present the main line of the criticism of Okin's work on this matter.

In the late 1960s political theory experienced its revival with social justice as its major concern. It is Okin's opinion that these theories neglected the fact that the society is affected by gender, which is one of the obstacles on the way to its



justness. The reason for this neglect is that most theorists assume the traditional gender-structured family.

Furthermore, political theorists distinguish the private sphere of family and public sphere of politics and marketplace. It is Okin's opinion that because of this distinction, the family is not a matter of politics and therefore not discussed in most of works of political theory today.

Unlike traditional liberal theory, a theory of justice of John Rawls places the family under the umbrella of justice. The problem that Okin finds is that Rawls does not apply the principles of justice in the family, which leaves its internal structure potentially unjust and therefore incapable of fulfilling its role in the well-ordered society. In order to override the problem of the private/political clash, Rawls assumes that the family is in some form just. The basis for the importance of the family is in the moral development of a child which makes it responsible for the reproduction of a just society. If this is so, Okin states that the family cannot be nonpolitical since it is indirectly involved in public sphere. But Rawls thinks otherwise "and suggests- in contrast to his acknowledgment that the nature of the family is within purview of the basic structure- that families, because they are based on affection, do not need to be regulated by principles of justice".<sup>30</sup> Okin asks *how can families be both part of the basic structure and not political?*

One of Okin's first objections to Rawls is that he keeps using male terms of reference, such as *men*, *mankind*, *he*, *his*, and *fraternity*. Rawls also uses gender-neutral terms such as *individual* and *moral person*. This in itself does not present a huge problem for Okin. What concerns her is that the usage of these terms is a long tradition in political philosophy, which Rawls unfortunately continues. Okin notices

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<sup>30</sup> Okin, S. (1994), "Political Liberalism, Justice and Gender", *Ethics*, 26.

that most of the philosophers did not include women in their theories which justify the usage of the male terms.

Furthermore, the author that influenced Rawls the most – Kant, does not consider women to be moral subjects, although his ethics is usually referred to as universal and general. While exposing on the Kantian ethics and explaining the value and the influence that it made on him, Rawls does not mention the fact that it is not all-inclusive since women are left out. This is the reason why Okin criticizes the usage of male terms and why she asks herself if this is so, “a feminist reader finds it difficult not to keep asking, does this theory of justice apply to women?”<sup>31</sup>

The second remark that Okin has on Rawls’ theory, is the nature of the parties in the original position. Namely, it turns out that “the parties” in the original position are not “single individuals” but “heads of families”<sup>32</sup> or “representatives of families”. “Rawls says that it is not necessary to think of the parties as heads of families, but that he will generally do so.”<sup>33</sup>

The reason why Rawls introduces the family representatives is to make sure that they will make the right choices. While choosing the principles of justice each person in the original position has in mind his/her extended future family, which should secure the best choice of the principles. This is what Rawls calls “ties of sentiment” which grant the choice of just principles. As mentioned in the previous chapter, Rawls changed “the heads of households” into “representatives of society” in 1975, but he kept the “ties of sentiment”.

In her later article, Okin argues that “Rawls does have to rely on empathy, benevolence, and equal concern for others as for the self, in order to have the

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<sup>31</sup> Susan Moller Okin, *Justice, Gender and Family* (Basic Books, 1989), 91.

<sup>32</sup> The head of the family does not need to be a man, but the term “female-headed household” is used only for households without adult men, which implies that any present man takes over the place of the family head.

<sup>33</sup> *Justice..*, 92.

parties come up with the principles they choose, especially the difference principle”.<sup>34</sup> This is not compatible with the description of the parties as mutually disinterested and rational, and, as I will show in the next chapter, introduces ethic of care into ethic of justice.

Okin states that by making parties in the original position heads of the families, wives and other members of the family which are not the *head* are completely unrepresented<sup>35</sup>. Since these members are unrepresented and are in the private sphere, in the case that they end up being less advantaged in the society their voice could not be heard. This potential situation should be covered by the second principle of justice, the difference principle, which is in this case impossible since Rawls does not fully apply both principles of justice to the family.

The central tenet of the theory, after all, is that justice as fairness characterizes institutions whose members could hypothetically have agreed to their structure and rules from a position in which they did not know which place in the structure they were to occupy. The argument of the book is designed to show that the two principles of justice are those that individuals in such a hypothetical situation would agree upon.<sup>36</sup>

Since Rawls changed the nature of the parties in the original position, one cannot resist not wondering *would the parties in the original position choose traditional family?* Okin states that in the original position in which a person is not aware of its sex one would *be concerned to establish thoroughgoing social and economic equality between the sexes*. This is why she thinks that Rawls’ theory has a potential critique of traditions and gender-structured social institutions.

Furthermore, Okin criticizes the distribution of wealth. It is expected that once the veil of ignorance is removed, that all of the parties that once were in the original position will now be the participants in the labour market. Okin notices that Rawls

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<sup>34</sup> Okin, S. (1989), “Reason and Feeling in Thinking about Justice”, *Ethics*, 243.

<sup>35</sup> As for the children, Rawls makes an argument of paternalism because of their temporary inequality and restricted liberty; in case of neglect children will be protected by the outside authority.

<sup>36</sup> *Justice..*, 94.

does not take into consideration the unpaid domestic work and the role of women as primary caretakers<sup>37</sup>. Okin states that the role of a primary caretaker is the main cause of inequality of opportunity, since that role is incompatible with many jobs<sup>38</sup>. This forces women to pursue education and jobs that are more compatible with the caretaking role. In this way men and women enter marriage and the work market on an unequal basis. A further consequence of this is the specific power dynamics within the family that does not favor women, namely economic dependence.

In this sense the fair equality of opportunity is not obeyed. It is women's gender, more precisely their ability to give birth, that puts them in the position of primary caretaker which then limits their life choices and prevents them from wanted self-realization. Women are forced to take lesser jobs in order to be able to juggle job and family. Success on two fronts, familial and professional, is not equally achievable for men and women. According to Okin, there is no guarantee that the family with sexual division of domestic labour could be just, which then potentially prevents it from fulfilling its role in Rawls' theory. Consequently, this makes the entire theory unstable and unsustainable.

The part of Rawls' theory that drew most feminist attention and criticism is the one on the family as the primary school of moral development which is responsible for the bringing up of future citizens and therefore for the future of the just society.

The family appears in *A Theory of Justice* in only three contexts: as the link between generations necessary for the just savings principle; as an obstacle to fair equality of opportunity (on account of the inequalities among families); and as the first school of moral development.<sup>39</sup>

Rawls treats the family as the earliest school of justice and argues that well-ordered society will be stable only if its members continue to develop a sense of justice. For

<sup>37</sup> In IPPR, Rawls will adopt Okin's criticism and advocate for the law that entitles women who do solely domestic work to the half of the husband's salary.

<sup>38</sup> Most work places are still structured around the assumption that "workers have wives at home", *Justice...*, 5.

<sup>39</sup> *Ibid*, 94.

him family is first “association” that people belong to in which they adopt a sense of justice which enables them to be the participants of the just society. Therefore, the future of the just society depends on the family, which is why its internal justice is important.

Okin argues that the lack of Rawls’ theory is the assumption that the family is just and that gendered family is not in accordance with the principles of justice. The question that Okin places is *how could Rawls give this important role to the family under mere assumption that it is just?* Rawls puts too much faith into raising of children since the destiny of just society relies on it. Anyone can form a family and it does not always turn out to be a happy one. Okin continues that the family as Rawls portrayed it, which is assumed to be just, and which is not in accordance with two principles of justice, cannot reproduce just society.<sup>40</sup> Since she sees gendered family as unjust and therefore unable to fulfill its role, for her it represents the main threat to the stability of theory of justice.

The most important part of Rawls’ theory -the reproduction of the just society- deeply depends on love, trust, affection, example, guidance and reciprocity. This dependence leads theory of justice away from its rational choice rhetoric. It is evident that moral development that Rawls suggests is unlike one given by Kant, who claimed that “justice must be grounded in reason alone, any feelings that do not follow from independently established moral principles are morally suspect -mere inclinations”.<sup>41</sup> As a response to this claim, Okin states that:

For despite his Kantian assumptions about rationality and autonomy, and the related rational choice language of much of his theory, Rawls’s account of moral development is very different from Kant’s and indicates clearly that rationality is not a sufficient basis on which to found or sustain his theory of justice.<sup>42</sup>

<sup>40</sup> At that point (it is 1989) Rawls did not explain how do two principles of justice affect family and are they applied at all.

<sup>41</sup> *Justice..*, 98.

<sup>42</sup> *Reason..*, 235.

Therefore, apart from the original position, moral development also depends on other things which are not in the domain of justice. This also proves that for Rawls' theory, justice is not a wide enough term since it needs care to be sustainable. I will return to this point in the following chapter.

Since the family is a crucial determinant for our opportunities in life, Okin states that the disparity in the family is its gender structure which represents an obstacle to the equality of opportunity. For example, the opportunities of women and girls are affected by the structure and practices of family life. "This is because so much of the social construction of gender takes place in the family, and particularly in the institution of female parenting."<sup>43</sup> Okin asks how will children that are not equally raised by both parents be able to develop a sense of justice? In her opinion, in this form the family is not school of justice, but school of unequal assignment of responsibilities that socializes children into sex roles which in the end perpetuates sex inequality.

At one point Okin states that children cannot develop a sense of justice if they are not equally parented by adults of both sexes, which is why she was criticized for being heteronormative. One of Okin's critics is Kymlicka who thinks that the main question that needs to be answered is the one of reproduction, because all other questions emanate from that one (such as domestic division of labor).

The question that Kymlicka poses is who has the right to form a family? In his long elaboration of the answer to this question, he criticizes Okin for setting traditional family framework (man, woman and children) without including so-called "nontraditional groupings" (gay marriages), which at least in some legal systems,

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<sup>43</sup> *Ibid*, 16.

have the right to form a family. It is Okin's opinion that children can develop a sense of justice only if they are parented equally by parents of both sexes.

Kymlicka responds: "How can we say that each child is the responsibility of her mother and father, and yet also say that no social significance attaches to gender? To tie child support to paternity is to reinforce compulsory heterosexuality."<sup>44</sup> Kymlicka's main criticism of Okin concerns her assumption of natural family, which therefore assumes much of the things that the theory of justice should deal with. Therefore, Kymlicka states that Okin assumes the old ideology which she herself wishes to defeat.

The last remark that Okin has on Rawls' work is the one on the solution of gender inequality (previously mentioned in the second chapter). Rawls suggests that the problem of the inequality and oppression of women can be solved in the same manner that Lincoln used in order to abolish slavery. In her article '*Forty acres and a mule*' for women: *Rawls and feminism*, Okin draws a parallel between slavery and women, i.e. the unpaid domestic work. After the civil war in the US and the abolition of slavery, many politically progressive people thought that 'forty acres and a mule' could enable black Americans to achieve equal citizenship.

Since women have been doing the unpaid domestic labour for centuries, Okin asks: what is the equivalent of 'forty acres and a mule' for women? In *IPRR* and *JFR*, Rawls clarifies his standpoint on gender equality by stating that women are as equal citizens as men, that they are free and independent individuals and that in that sense gender equality is secured. Okin's response to this matter in general is

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<sup>44</sup> Kymlicka, W. (1989), "Rethinking the Family", *Philosophy and Public Affairs*, 86.

that “in the case of gender, as with race, formal legal equality does not solve the problem.”<sup>45</sup>

This point is also mentioned in the article by Ruth Abbey, saying that “the proponents of feminist-liberalism have realized that merely offering women the same public powers as men would be insufficient to realize the liberal project. Instead, Wollstonecraft, John Stuart Mill, and Harriet Taylor agitated for the extension of liberal values and virtues into domestic realm too”.<sup>46</sup>

Okin’s critique of Rawls is highly plausible; it notices the irregularities and corrects them in the way that benefits the most to the just society. However, I find her “remedies” to gender-structured society too optimistic. The author presumes that the public sphere influences the private sphere and that they perpetuate each other. That is why she thinks that by changing some significant policy, in this case labor law, will change the power relations within family. The problem is that it is not the workplace, but it is that family that is considered to be ‘the ultimate bastion of female oppression’. If this is so, the influence from the workplace might not be strong enough to change the unjust power relations that have been existing within the family for centuries.

Besides the influence from the workplace, the author also relies on the power of education which should lead us towards gender-free future. This is why Okin thinks that changed just relations in the workplace should have their mirror image in the household which would result in equal division of unpaid labor between man and woman. It turns out that the only problem remained is the unpaid housework, since *women are out of the house but not out of the kitchen*. The division of domestic work

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<sup>45</sup> Okin, S.M. (2005), “Forty acres and a mule for women: Rawls and feminism”, *Politics, Philosophy and Economics*, Vol. 4, No. 2, 234.

<sup>46</sup> Abbey, R. (2007), “Back toward a Comprehensive Liberalism? Justice as Fairness, Gender and Families”, *Political Theory*, Vol. 35, No. 1, 20.



represents an obstacle to the just society and mere changes of work conditions assisted by proper education do not seem reliable enough to solve such a complex problem.

## 3.2. Other feminist criticism

### 3.2.1. Deborah Kearns

In her article *A Theory of Justice –and Love; Rawls on the Family* which was published in 1983, Deborah Kearns criticizes Rawls on the same basis as Okin: an unjust family cannot reproduce a just society. Kearns states that, by stating that Kant was his major influence, Rawls adopts the same Kantian conception of women's morality as different and therefore incapable of having a public reason:

On the one hand, his [Kant's] philosophy rests on the assumption that, by virtue of being human, everyone has reason, and so possesses the capacity to act according to universal and moral laws and to participate in civil life. On the other hand, human capacity is sexually differentiated. Women lack political or civil reason.<sup>47</sup>

Furthermore, she states that Rawls, by claiming that the family is based on love and affection, excluded the family from the scope of the principles of justice. It is love that made possible for him to keep the nuclear family and its sexual division of labour unchanged: since the family is a sphere of affectionate ties it is supposed to be just, and because it is sphere of affectionate ties it is not acceptable to make any internal changes. Kearns states that in the traditional monogamous family, female and male children have different experiences which prevent them from developing the same sense of justice. This is why she thinks that Rawls' whole theory is flawed since, with this kind of the family, it cannot secure the same moral development for all of its citizens, meaning female and male.

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<sup>47</sup> Carol Pateman, *The Sexual Contract*, (Stanford University Press, 1988.), 168.

The second reproach to Rawls is on the nature of parties in the original position, which have in mind their descendants while deciding on the future principles. “By assuming that all individuals party to the contract are concerned about their descendants, but that their affection for friends and current associates is hidden by the veil of ignorance, the idea that the family is the place for affection and natural sentiment is institutionalized. Other relationships are presumed to be those of self-interest.”<sup>48</sup> To put it differently, Kearns states that this places the family outside of the original position, which means that therefore it is not subject of the just principles, since the original position presupposes rationality.

Like Okin, Kearns also criticizes the development of the sense of justice. Since the nuclear family is based on a sexual division of labour, where women bear greater responsibility for childcare and housework, it reinforces the values that cannot work in favour of the sense of justice. This way males and females will have different experiences within a nuclear family, since they are socialized for the different futures.<sup>49</sup> Therefore, Rawls follows the philosophical tradition which denies that a woman might have self-interests that can override the demands of the private sphere, since the upbringing in the traditional family puts girls and boys in separate roles. This way women do not have an opportunity of becoming citizens in the practical participatory sense. Later on in *IPRR*, Rawls will abolish the public/private division, which will have a direct implication on the women’s rights as citizens, meaning that men and women have the same rights as citizens.

Kearns is the first critic of Rawls that pointed out the *care* aspect of his theory. Theory of justice nominally requires rationality but it tacitly also requires care in order

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<sup>48</sup> Will Kymlicka, ed., *Justice in Political Philosophy*, vol2, *A Theory of Justice –and Love; Rawls on the Family*, by Deborah Kearns (Edgar Publishing Ltd., 1992), 480.

<sup>49</sup> At one point Rawls mentions the virtues of the good son and of the good daughter, which indicates the difference in the socializations and the future roles that are intended for them.

to be stable. This excludes the possibility of strictly just agreement made by mutually disinterested rational parties and introduces the concept that is diametrically opposite to it – care. I will address this question in the following chapter.

### 3.2.2. Veronique Munoz-Darde

Another author that criticized Rawls from the feminist perspective is Veronique Munoz-Darde, who asks why is the family assumed to be just? There are several answers, the obvious one is that the family is an institution of moral development and therefore has to be just. Another possible answer is that the family is a special sort of association and is just because of its special nature.<sup>50</sup> The third explanation lies in the nature of the parties in the original position, which are described as ‘continuing persons’ or ‘genetic lines’ or as the idea of an ‘everlasting moral agent’. Therefore, Munoz-Darde states that the reasons why the family is assumed to be just is because the parties have in mind their future family while deciding on the principles of justice.

This means that Rawls tries to keep his theory stable and plausible by appealing to the concept of care, which is the term that is opposite to the term of justice. This also contradicts the idea of the original position and the ideas of the parties as rational and disinterested.

Placing the question of care for the next generation in an individualized manner behind the veil of ignorance has therefore the consequence either of accepting that special ties of sentiment should play a role in the original position, which is ruled out by the construction of this heuristic device, or of situating in the original position what should be the result of deliberation in it, namely, the idea that the family ‘in some form’ is just, for example, because of this capacity to care for each person as the singular individual he or she is.<sup>51</sup>

<sup>50</sup> This argument was confuted by other feminists which proved that the family cannot be similar to associations since the way one enters them is voluntarily, unlike the entrance in the family.

<sup>51</sup> Munoz-Darde, V. (1998), “Rawls, Justice in the Family and Justice of the Family”, *The Philosophical Quarterly*, Vol. 48, No. 192, 342.

Munoz-Darde states that Rawls contradicts the purpose of the original position by admitting that the ties of sentiment play a special role, a role which rules out a reflection of justice within the family and which then consequently accepts the inequality of opportunity within the family as justified by the affectionate ties. This is why the author states that the idea of the parties in the original position as genetic lines should be dropped and more individualistic account should be accepted; the author also states that Rawls should not assume that parties care for their descendants. According to Munoz-Darde, these changes would enable the application of the principles of justice on the family, just like on any other small association.

It seems that Munoz-Darde refuses to accept both Rawls' theory and current feminist criticism and wishes to offer a third way. The author notices the lacks of Rawls' theory, namely the involvement of care and its support to the concept of justice, and wishes to rationalize and individualize the theory which should result in the possibility of application of justice within the family. From my point of view, it is more fruitful to expand the concept of justice with care, since it is obvious that the theory of justice in two crucial points (the foundation and reproduction of just society) needs care in order to survive.

### **3.2.3. Iris Marion Young**

Young criticizes Rawls' claim that the first subject of justice is the basic structure which is for her in the direct tension with emphasis on distributions. Since Rawls gives more attention to the basic structure than to distributive aspects, she finds that it is the reason for the unjust division of the domestic labour which consequently puts women in the inferior position.

For Rawls, the general aspect of the basic structure of society is the social division of labor. The principle which regulates the issues of justice within the division of labor is *fair equality of opportunity*, meaning that all positions within society should be equally accessible to everyone on an equal basis. This point is criticized by Iris Marion Young, who states that fair equality of opportunity presupposes the allocation of positions which do not discriminate by race, gender, family origin, or other ascriptive characteristic, which is not the case. The author states that the violation of fair equality of opportunity takes place in family. Furthermore, Young raises the question of how the occupations themselves should be defined.

Is it just, for example, that an aspect of the basic structure of society consists in an occupational pyramid where the more plentiful positions are at the bottom are relatively menial, repetitive, and subordinate to the decisions of others, while the few positions at the top carry broad autonomy, decision making power, and prestige?<sup>52</sup>

It is a rare sight to see women in the highest positions and one of the reasons for that is their position in the family. Young approaches this problem from the aspect of gender justice: “A division of labor persists as part of the basic structure of most societies in the world, which assumes that women devote primary energies to taking care of children and other dependent members, while ideally men are the primary income generators for family”<sup>53</sup>.

According to Young, this structure of sexual division of labor has far reaching implications on the worth of different kinds of labor, sexual segregation and gender stereotyping in public paid occupations. “Arguably as long as basic institutions treat

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<sup>52</sup> Young, I. M. (2006), “Taking the Basic Structure Seriously”, *Perspectives on Politics*, Vol. 4/No.1 , 93.

<sup>53</sup> Young, 93.

care work as primarily the private responsibility of families, social policy will pay insufficient attention to it”.<sup>54</sup>

I agree with Young’s claims and would add that the nature of the family has its repercussions in the public sphere which then, in certain measure, makes it also unjust. Therefore, the unjust family relations have their spillover effect into the public sphere and that leaves no space for discussion on just society in Rawlsian sense. In this sense, unjust family makes an unjust society.

If women devote their primary energies to doing dependency work, then they cannot devote it their paid occupation. This is why they choose lesser jobs which are then perceived as women’s jobs. This is how gender stereotyping in paid occupations takes place, and the final result is that these “women’s jobs” are usually underpaid.

To conclude, feminists mostly criticized Rawls for not applying the principles of justice to the family, which would then make his entire theory more consistent, especially when it comes to the reproduction of just society. Rawls responded to the majority of feminist criticism, but he still remained reluctant to apply the principles of justice to the family. Furthermore, his “attempt to clarify the relationship between the family and the principles of justice position has not been entirely successful”.<sup>55</sup> It seems in the end that Rawls applies the first principle directly to the family, but not the second one, which leaves the problem of the fair equality of opportunity unsolved. Rawls remains vague in explaining the treatment of the family, “it is very difficult to figure out just what Rawls finally thought were admissible applications of justice to the family life, for at the very same time as he applied the principles of

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<sup>54</sup> *Ibid.*

<sup>55</sup> Abbey, “Back toward a Comprehensive Liberalism?”, 14.

justice to families, he also insisted quite strongly that they do not apply *within* families”.<sup>56</sup> Therefore, the main tension remains unresolved.

The first line of feminist criticism emphasized the parts of Rawls’ theory that pays insufficient attention to the family and therefore, neglects the position and the treatment of women, which in the end is not compatible with the equality of opportunity that theory of justice wishes to achieve. The second line of feminist criticism, ethics of care, emphasizes the fact that women’s ethical experience cannot be fully understood from the aspect of justice, and that therefore justice needs care in order to achieve gender equality. In the following chapter I will present the main characteristics of ethics of care, the criticism of Rawls’ theory from its aspect and the propositions for the improvement of theory of justice. Taken together, both lines of criticism should provide suggestions for the achievement of gender equality in everyday life.

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<sup>56</sup> Okin, “Forty acres and a mule...”, 245.

## 4. ETHICS OF CARE

Ethics of care has generally been defined as woman's ethics and examined through its relation to ethics of justice, man's ethics. In this chapter I will take a different approach, I will identify care as a political concept. In the first part I will define ethics of care and ethics of justice, their relation and their differences which places ethics of care within the private and ethics of justice within the public sphere. Further on, since this kind of placement of care and justice perpetuates the public/private distinction, I will address the question *which ethics should be extended to which sphere?* In my addressing this question I will follow the argumentation of Tronto and Sevenhuijsen, theorists that see care as a political concept. I will explore the possibilities of application of care within politics and emphasize its positive impacts on society. The final result should provide a support for the placement of care within politics.

Finally, I will present the criticism of Rawls from the aspect of ethics of care and offer an introduction of care into justice, which should provide a more plausible base for the theory of justice and it would fortify its stability. Taken to a more practical level and according to the authors that use care as a political concept, the introduction of care should also contribute to gender equality in everyday life.

### 4.1. Care vs. Justice

Feminist debates on the ethics of care began in the 1980's and until today there is very little consensus on what it actually is, where it should be placed and what the exact relationship is between ethics of care and ethics of justice.

Furthermore, within feminist ethics there is a debate on whether ethics of care is understood as feminine ethic related to women's morality or it is de-gendered



morality.<sup>57</sup> The first approach considers ethics of care as woman's ethic which should contribute morality in general by bringing in particularity and compassion, understanding in the terms of pure and universalistic justice. The second de-gendered approach considers ethics of care not only as a moral but a political concept, which is why it could be placed in the center of the political arena. This would require the political and public recognition of care as practice and work. Since the first approach perceives ethic of care exclusively as woman's ethic that should contribute to morality in general with its conceptions of 'good woman'<sup>58</sup>, I will opt for the second de-gendered approach which does not reside exclusively on differences between sexes. With its notions of capability of everyone to acquire both types of ethics, the second approach seems more adequate for the achievement of gender equality. In this chapter I will focus on the second debate because it enables the usage of care within politics. I will describe the specific relation between care and justice and I will show how care could be used as a political concept.

The basis of both ethics of care and justice lie in the differences between the sexes, more specific in the woman's ability to give birth. Women seem to be more attentive to the context, particularity of moral situations, tend to solve problems integrating care and responsibility, unlike men whose point of moral reasoning is related to rules and rights. These two different views of moral reasoning are considered to be the basis of two different ethical orientations: ethic of care as women's morality and ethics of justice as men's morality. On the one side there are justice and reason and on the other responsibility and care.

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<sup>57</sup> The authors that understand ethics of care as feminine morality are C. Gilligan, V. Held, N. Noddings and S. Ruddick, while the authors who consider it as de-gendered morality are J.C. Tronto and S. Sevenhuijsen.

<sup>58</sup> The usage of the traditional stereotypes of a 'good woman', which are derived from women's ability to give birth and therefore with naturalness of the whole process, the first approach of ethics of care was criticized by some feminists. Furthermore, by relying to the fact of naturalness men are excluded, i.e. incapable of acquiring ethic of care.

An ethics of justice focuses on questions of fairness, equality, individual rights, abstract principles, and the consistent application of them. An ethic of care focuses on attentiveness, trust, responsiveness to needs, narrative nuance, and cultivating caring relations. Whereas an ethic of justice seeks a fair solution between competing individual interests and rights, an ethic of care sees the interests of carers and cared-for as importantly intertwined rather than as simply competing. Whereas justice protects equality and freedom, care fosters social bonds and cooperation.<sup>59</sup>

It is important to emphasize that although each of these two ethics are related to different sexes, it does not mean that women can only acquire ethics of care and men ethics of justice: "It does not describe two genderized moralities but two standpoints that both men and women can adopt, although there are reasons why women might be more inclined to speak more often in the language of care".<sup>60</sup>

Ethics of care is linked to the emotions, relational ties, nurturing and caring, which are all values of the private sphere. On the opposite side there is man's morality which is constituted on the reason, on the Kantian principle of universality and justice which is all placed in the public sphere, in the place of politics.

Furthermore, main difference between two ethics is based on impartiality which is characteristic of ethics of justice, while ethics of care is established on special relationship between two moral agents:

From a justice perspective, the self as moral agent stands as a figure against a ground of social relationships, judging the conflicting claims of self and others against a standard of equality or equal respect (the Categorical Imperative, the Golden Rule). From a care perspective, the relationship becomes the figure, defining self and others. Within the context of relationship, the self as moral agent perceives and responds to the perception of need.<sup>61</sup>

It follows that all other differences between the two ethics arise from the basic one, impartiality. Another distinction concerns universality of ethics of justice and particularity of ethics of care, meaning that they are both determined by the nature of the relation between the two moral agents.

<sup>59</sup> David Copp, *The Oxford Handbook of Ethical Theory*, (Oxford University Press US, 2006), 546.

<sup>60</sup> Moore, M. (1999), *The Ethics of Care and Justice, Women and Politics*, Vol. 20(2), 4.

<sup>61</sup> Moore, 3.

Further distinctions between the two ethics are:

- ethics of justice emphasizes universal moral principles and individual conscience, while ethics of care pays more attention to people's needs and to relations between actual people
- universality of ethics of justice supposes abstract moral rules which apply to everyone, while ethics of care is defined in particularity where self and other are not detached, but attached through caring relation
- ethics of justice: autonomy, equality and rights (embedded in our societies, in the public sphere)
- ethics of care: relationality, interdependency, responsibility and care (care, emotions, relations among people-private sphere)<sup>62</sup>

These characteristics of both ethics raise the question of the relation between care and justice. At first it seems that they are mutually exclusive because they have opposite values and exist in different spheres. But if we draw a sharp line between them it will strengthen the public/private dichotomy and consequently it will make care unusable as political concept.

The question is *which ethics should be extended to which sphere?* There are several approaches to this question and in my addressing to it I will follow the argument of 'de-gendered' theorists, namely Tronto and Sevenhuijsen who understand ethics of care as a new approach to justice, morality and politics.

These authors state that care should be understood as a moral value and as a basis for the political achievement of a good society which would enable the people to think about morality without dividing it into women's and men's. Tronto and Sevenhuijsen's approach to ethics of care defines it as moral and as political

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<sup>62</sup> Živa Humer, MA Thesis: *Care, Justice and Equality*, Central European University, 2004, 9-12.

concept. In political sense, care is understood as a practice that aims at maintaining, continuing, or repairing the world.<sup>63</sup>

Since care is generally perceived as apolitical, Tronto proposes different conceptualization which frees care from its apolitical context. Furthermore, Tronto proposes several possible usages of care in specific fields of politics. Sevenhuijsen considers feminine ethics to be trapped into motherhood, meaning that if we identify care as natural then we tie it to instincts and not to moral choice. The consequence is that once we do that, we cannot place ethics of care in the political sphere.

#### 4.1.1. Care as political concept

Tronto states that care serves as a political concept in two senses: care as a goal (a collective ideal) and care as a strategy (a way to affect the outcome of political conflict). Care as a political goal is not a new notion: society flourishes when its citizens are well cared for. Care as a strategy presupposes answers to two questions: who should provide care and who should bear the burdens of care. This opens the space for broader political participation, namely for the inclusion of women into politics.

In order for women to become active, they need to sense that their concerns are part of the public concerns. By focusing on a vocabulary of care, feminists would be able to point to the importance of women's traditional activities without being forced to the logical position that women should continue to perform those traditional duties.<sup>64</sup>

Since care presupposes relationality, interdependency and is inherently integrative, its natural place should be politics. On the micro level, the goal of care is the common good and it would fulfill the same goal once applied in politics. At the

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<sup>63</sup> Humer, 26.

<sup>64</sup> Nancy. J. Hirschmann and Christine Di Stefano, *Revisioning the Political*, (Westview Press, 1996), 144, 145.

moment, care is placed within the private sphere and is therefore labeled as parochial, which reduced its value. Introducing of care into politics should be made through what is relational to it, namely public education or daycare. Further places of application of care could be employment policies, nondiscrimination, health care, equal opportunities policy, immigration policy, family policy, ecology.<sup>65</sup>

Once care as a concept is introduced in public life, it could solve larger problems, such as the main problem of the welfare system: the relation between caregivers and care-receivers. The welfare system as we have it is inherently unequal and places caregivers above care-receivers, which are perceived as a problem. Introduction of care means the introduction of the general notion that every human is in some part of their life dependent on somebody's care and assistance. The society which would accept care as a political concept would develop a conscience of interdependency which would emphasize the connections between people, and that way unequal welfare consequences would be eliminated.

The standpoint of Sevenhuijsen is that ethics of care is a necessary element in the concept of democratic citizenship. The main characteristics of ethics of care (relationality, interdependency) and especially its attentiveness to the context, makes it suitable for the improvement of the concept of citizenship (usually described in the terms of diversity and plurality).

If we integrate values derived from ethics of care, such as attentiveness, responsiveness and responsibility, into concept of citizenship this will produce a dual transformational effect: the concept of citizenship will be enriched and thus better able to cope with diversity and plurality, and care will be 'de-romanticized', enabling us to consider its values as political virtues.<sup>66</sup>

Citizenship is usually understood in the terms of equal rights and equal treatment.

The social-liberal concept of citizenship makes a clear distinction between the public

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<sup>65</sup> According to Tronto, the only domains of human life that do not presuppose care are production, destruction and the pursuit of pleasure.

<sup>66</sup> Selma Sevenhuijsen, *Citizenship and the Ethics of Care: Feminist Considerations on Justice, Morality and Politics*, (Routledge, 1998), 15.

and private sphere and tries to interfere as little as possible to the private sphere. This means that equality covers only the public sphere.<sup>67</sup>

This concept presupposes the notions of autonomy, particularity and individuality, and neglects the interdependence and relationality of the people within a certain community. Sevenhuijsen argues for the concept of *caring citizenship* in which the notions of interdependence would be emphasized and would benefit the community. The concept of *caring citizenship* implies that the people would be at the same time in the role of the care giver and the care-taker and that way the quality of social care would be improved. This concept signifies a switch from an individualistic view towards relational one.

Furthermore, this concept signifies an introduction of care as political practice which can further on influence the policy debates on welfare. Therefore, usage of ethics of care as a political concept would lead to integration of the care giver and care-receiver that would offer a new concept of the welfare state.

Sevenhuijsen also states that in modern societies two intertwined processes are taking place: the relocation of politics and the relocation of care. The relocation of politics means that the power is relocated from parliaments to the head offices of large international enterprises, the corridors of supranational organizations, to national and international courts. This is why today's political systems suffer from a democratic deficit which calls for new ways of democratic control. The relocation of care means that caring activities which were once done at home, are now taking place outside of the home, namely in the collective and commercial services. These two processes are not separate. The relocation of care from the homes to the public has made it a subject of political action. Since both politics and care are relocated,

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<sup>67</sup> Humer, 31.

there is a need for new ways of responsible policy-making. Sevenhuijsen proposes two solutions:

The development of collective agency directed towards people's needs for leading good life, and in which they can realize their connections with and commitments to each other. Space will be created for new practices of caring citizenship: practices in which people can manifest themselves as givers and receivers of care and where they, in dialogue with each other, can work on the quality of social care.<sup>68</sup>

This way, new forms of democratic action will be created which will integrate ethics of care into public policy, namely the welfare policy. Therefore, a space is created in modern democracies for the introduction of care as a political concept.

The new politics of care would take place in civil society which means that the society will affect itself. This way, new social policy will be more under the influence of moral considerations than it is possible once government decides on future policies.

In today's modern societies, the nature of work and life in general is changed. The working and the school hours are longer, which has changed the habits and the ways of life. The majority of activities that were once done at home are now being done outside of it, whether it is clothes washing, eating or child rearing. This way care has exceeded the private sphere and that way has become a political question. At the same time, politics has transgressed the limits of parliament and now exists on much higher levels, which makes the problems of community secondary. This opens a space for introduction of new ways of (self)governing. One of the possible solutions is an extension of ethics of care into the public sphere. This is legitimate because care itself has become a public matter. Ethics of care with its general notions of relationality, interdependence and attention calls for the concept of caring

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<sup>68</sup> Sevenhuijsen, S (2003), "The Place of Care. The Relevance of the Ethics of Care for Social Policy" in Sevenhuijsen S. and Svab A., *Labyrinths of Care. The Relevance of the Ethics of Care Perspective for Social Policy*, Peace Institute: Ljubljana, 17.

citizenship, which would influence the policy-making process. The caring citizenship would exist within the civil society and would bring politics to its roots-the good governing.

Although the theoretical framework puts ethics of care in the private sphere and gives no hope for its usage in politics, it is possible to do so. In this sense, placement of ethics of care within politics signifies the abolition of the public/private dichotomy. Through the arguments of Tronto and Sevenhuijsen, it is obvious not only that politics is a legitimate place for care, but that care is necessary for politics, in its ideal sense. Care within politics makes people aware of their fellow citizens and also emphasizes the role of active citizenship. With its notions that *no man is an island*, care it introduces morality into politics. If care succeeds in finding a place within politics in real life, we might need a new definition of politics.

#### **4.2. Criticism of Rawls from the aspect of ethics of care**

Another line of feminist criticism of Rawls came from the aspect of ethics of care. The main argument is that although nominally founded on rationality and individuality, in order to be sustainable a theory of justice presupposes care. There are two crucial moments in the theory of justice which tacitly use care in order to be plausible and stable: first in the original position, and second in the development of primary sense of justice. Therefore, justice presupposes care, although it is not explicitly said in any of Rawls' works. Since Rawls abolishes the public/private distinction, a path for introduction of care into justice is opened.

Besides Mill, one of the authors that influenced Rawls the most is Kant, which is why it is important to explain the Kantian notion of universalistic morality. Kant's standpoint is that every man is determined by his/hers reason. This is why reason is



the basis of Kantian morality and it is embedded in the categorical imperative: "Act only according to that maxim whereby you can at the same time will that it should become a universal law." This actually means that we should act and make decisions that are made only by reason, not by feelings. Moreover, the imperative is impartial, unconditional and applies to everybody. This is the pure application of ethics of justice which leaves out the family and personal life, which are considered to be the irrational sphere of affectionate ties.

In his theory and especially in the original position, Rawls adopts this kind of reasoning. Parties in the original position behind the 'veil of ignorance' are not aware of their characteristics, which makes them suitable to conceive the principles of justice that will be applicable to everyone. This means that they act as rational and impartial moral agents. But it is hard to say that they act solely on the principles of Kantian morality. Namely, when deciding on basic principles of just society, parties in the original position have in mind their extended family. In other words, they have in mind their future descendants. This kind of reasoning introduces ethics of care into ethics of justice. Having their descendants in mind, the parties in the original position have a special kind of relationship to them, and their actions are differently influenced, they stop being impartial and they start to care.

In Rawls' theory, then, practical reason is conceived of as bifurcated into its impartial and self-interested components. The principals of justice, which regulate the basic framework of society (the public sphere), are arrived at from an impartial moral perspective. Everything else is conceived of as belonging to the personal realm, as a personal choice, and as self-interested (though not necessarily selfish) action.<sup>69</sup>

The question is then, how are impartiality and particularity related within the person who will act differently in relation with particular people based on affective ties? This

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<sup>69</sup> Moore, 6.

implies that public/private, impartial/partial division corresponds to the same division within the self, which is implausible.

Furthermore, it means that ethics of care, which is tied to the private sphere, influences and participates in the construction of the public sphere, which only confirms the artificiality of this division. The only question is why Rawls does not confirm this influence? Instead, he continues persuading us that the parties in the original position are rational and impartial which enables them to have the sense of justice.

The sense of justice that people develop and that is so much needed in order to have just society is learned in the family, which is understood as the primary school of moral education. Within the family children should adopt the sense of justice and therefore become functional members of just society. What is even more important, “it is not the justice of the institutions of moral development which socializes individuals into morality but the care and affection of particular individuals for other particular individuals”<sup>70</sup>. This once again confirms the artificiality of the public/private distinction: if justice theory would presuppose care, then this distinction would be unsustainable. In his later works prompted by feminist criticism, Rawls will introduce the absence of the public/private dichotomy within his theory. This fact facilitates the introduction of care into justice and, in more practical sense, it enables the usage of care as a political concept. With the introduction of care, the theory of justice would gain on its plausibility and stability and, at the same time, it would work in favour of gender equality not only within the legal norms but in the real life.

It seems that Rawls’ liberal theory presupposes care (at least) in the sense of motivational factor. The parties in the original position cannot be (and are not)

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<sup>70</sup> Moore, 10.

motivated solely by freedom and equality, it is the reflection of their historical, genetic ties to particular others that motivate them to choose the just principles. Care is necessary for acquisition of the sense of justice and therefore for the stability and functionality of just society.

It is the dominant view of liberal justice theorists that moral knowledge is acquired only through rational reflection. But if the early moral development is the task of women within the family, what kind of morality do children acquire? "Does a fully impartial ethics necessarily exclude special moral obligations to friends and family and thus exclude considerations that are more likely to figure centrally in women's actual moral thinking given their traditional and ongoing familial role?"<sup>71</sup> Therefore, from the aspect of ethics of care contemporary justice theories do not comprehend the moral significance of relations between people that are based on affectionate ties.

Another aspect of the ethics of care criticism takes into consideration the positioning of the dependency worker within Rawls' theory. This criticism of the modern liberal theories is called *dependency critique* which

maintains that by constructing society as an association of equals, conceived as individuals with equal powers, equally situated in the competition for the benefits of social cooperation, one disregards the inevitable dependencies of the human condition, thereby neglecting the condition both of dependents and those who care for dependents. The dependency critique looks beyond women's socially prescribed differences from and subordination to men by considering the difficulties in assimilating women to the liberal ideal of equality. Its focus is on the circumstances under which the ideal was conceived and, more specifically, on the presumption that inevitable human dependencies and the consequences of such dependency for social organization are outside the political sphere for which the ideal of equality was articulated.<sup>72</sup>

Therefore, the dependency critique argues for putting the dependency work under the umbrella of justice, since it has far-reaching implications on society's well-being.

<sup>71</sup> Calhoun, C. (1988), Justice, Care, Gender Bias, *The Journal of Philosophy*, Vol. 85, No. 9, 460.

<sup>72</sup> Patrice DiQuinzio and Iris Marion Young, *Feminist Ethics and Social Policy*, (Indiana University Press, 1997), 3, 4.

Furthermore, since dependency is at one point or another inherent to human beings, it should become a public matter.

The apologists of ethics of care state that care should be incorporated into modern theories of justice and set forth the reasons for such inclusion:

If care is detached from particular, historical relations and is extended to everyone, it becomes indistinguishable from the impartial standpoint of justice. The standpoint of impartiality is the exact reverse of the standpoint of care, in that it requires the person to abstract from her particular desires, aims and ideals and view each person as equal to all others. And it is difficult to see how the person could possibly develop any attachments to others from the impartial perspective and so develop the capacity to act morally. It is difficult to conceive how one could become attached to another if required to view her as absolutely and abstractly equal to others and undifferentiated.<sup>73</sup>

It is evident that Rawls' theory incorporates care in some form and that is crucial for well ordered society in its initial stage as a motivational factor. Care is also necessary in the primary stage of moral development, but despite both of these roles in the theory of justice care is not *explicite* acknowledged as a vital and unavoidable factor.

Another contribution of care to the theory of justice could be its appeal to individualistic and intrapersonal relations. One of the criticisms to Rawls' theory is that it is based on the level of institutions leaving the individual part aside. With its characteristics of relationality, interdependency and responsibility, care could fill in that gap, since on a primary level it affects small scale interactions.

With inclusion of care in the theory of justice Rawls' theory would resolve the problem of moral development, it would acknowledge the ties of sentiment as unavoidable when it comes to founding and perpetuating a well ordered society. Furthermore, it would acknowledge dependency work as work and in that sense it would become one of the subjects that distributive justice would decide upon. This way a "long and historical injustice towards women" would be corrected. Finally, the

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<sup>73</sup> Moore, 11.

abolishment of the private/public distinction within the theory of justice provides a basis for the placement of care within the scope of justice.

## 5. CONCLUSION

The goal of modern liberal societies is to reach the ideal of equality for all of their citizens, regardless of their race, ethnicity, religion, gender and sexual orientation, and when we look at the legal norms it seems that the goal is accomplished. But in real life the situation is quite different and there are still all forms of discrimination.

When it comes to legal regulations, it is often debated whether the state should stop at the doors of one's home, since it is the private sphere of the individual in which everyone is allowed to freely follow its conception of good. The question is whether the sphere of the family should remain a sphere of privacy and love, and the state should not interfere in it. If this is so, what changes are allowed to be in order to achieve justice in the family and consequently gender equality?

Feminists often argue that the family is the final bastion of women's subordination. Women have been doing the major part of the domestic and dependency work and the consequence is inequality in the work market. When it comes to the choice of future occupation, women must take into consideration their domestic duties and take a job that will leave enough time and energy to deal with domestic tasks afterwards. This places women in a situation in which they have to juggle work and the family. Also, the very fact that women can give birth make certain work positions unavailable for them.

Feminist criticism of Rawls, especially the one that criticized him within the framework of the theory of justice, has recognized the importance of his work for the twentieth century society which is why it aimed to contribute to it. It has also recognized the progress that theory of justice has made compared to similar works in the past, namely the placement of the family within the sphere of justice. The criticism

that feminists offered was mostly constructive and motivated by good intentions, it noticed that it has elements which, once corrected and supplemented, can contribute to gender equality. The response that feminist criticism received from Rawls indicates that he understood and took into consideration their arguments, which consequently helped to improve and fill in some gaps in the theory of justice. Therefore, it can be said that both the theory and its criticism have been growing together for an almost twenty-year period.

Feminist criticism highlighted the problematic parts of Rawls' theory and offered solutions to it. Apart from the criticism that referred to the family as a primary school of morality and the problem of the application of the equality of opportunity principle, feminists indicated that Rawls' theory presupposes care, although it does not indicate it in so many words. Since Rawls introduced the abolition of the public/private distinction and does not consider these two spheres as hermetically separated from each other, the way for innovations was opened. Furthermore, as the theorists that use care as a political concept indicated, modern society has changed in the sense that caretaking activities no longer take place solely in one's home. The way of life is changed and the activities that once were considered to be part of the domestic sphere are now taking place in public. This makes them subjects of justice and it also means that a large amount of domestic work is now being done by some public service, which leaves fewer jobs to do at one's home.

The other argument that feminists make is the dependency argument, namely the dependency work which has never been acknowledged as socially needed work, since it was done far from the eyes of the public in the domestic sphere. This is why they argue that this work should also be put under the umbrella of justice, it must be recognized as work and rewarded as work. If this is done so, together with the switch

of the caretaking activities to public, the majority of domestic work is taken care for. Therefore, the nature of modern life which places the majority of domestic work into the public sphere together with the acknowledgment of the dependency work as work, should resolve the problem of gendered division of domestic labour. Together the changes of the treatment of dependency work from the side of the state and the modern way of life introduce justice within the family. The necessary changes of the treatment of dependency work do not in any way jeopardize the privacy of the family. Therefore, there is no need for or fear from the “kitchen police”.

Rawls’ theory presents a benchmark since it places the family under the sphere of justice, but it also offers numerous possibilities for the improvement of the position of women and other suppressed groups. The recognition of the merits of care for the stability of the theory of justice is one step towards gender equality.

In the end, I would like to quote, or more specifically, to paraphrase the submayor of Berlin Barbara Kisseler, who was a guest lecturer in one of our classes. She said, once when we have as stupid women in politics as we have men today, we may say that gender equality is achieved. Hopefully, with some changes this day will come.



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