

September's Children:
Rawlsian Neutrality and the Rights of Gay and Lesbian Children

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In recent years, neutrality has emerged as an oft-debated tenet of liberalism. The aim and function of liberal neutrality is to assure that the state gives no preference to any particular conception of the good life, concept of excellence or comprehensive moral or religious doctrine, allowing for pluralism to flourish unencumbered.¹ Neutrality is addressed in John Rawls' work through his distinction between public reason and comprehensive moral doctrines, the former being the appropriate (and limited) medium through which political determinations are made and the latter being the appropriate medium to make decisions about one's private life, including family matters. In our public discussions, we are called to limit ourselves to principles that can be agreed upon without reliance on the support of comprehensive moral or religious doctrines. In our private lives, however, we are free to make decisions based upon any (or no) such doctrines that we choose. In this way, the liberal polity can seek to embrace pluralism while concurrently respecting varying belief systems.

Family life, in large part, is one of the places in which we can clearly see neutrality distinctively at work. Liberal scholarship has hosted (and continues to host) a lively debate about neutrality and the public/private distinction, particularly spurred by feminist concern about the way in which this liberal tenet affects the lives of women. (See, for example: Pateman, 1983; English, 1987; Pateman, 1987; Okin, 1989; Cohen, 1992.) In particular, these critics are concerned that walling off the family from public scrutiny serves to also shield from scrutiny injustices that may occur in the household with regard to gender. Indeed, Pateman (1983) goes as far as to write that, "the dichotomy between the public and the private... is, ultimately, what the feminist movement is about" (82).

¹ For more background information on subject of liberal neutrality, see Dworkin (1978) as well as, for Rawlsian neutrality specifically, Kymlicka (2002), pp. 217-19.

Neutrality also has implications for the family with regard to children. For example, parents are responsible for the primary moral development of their children and, in general, may raise their children in whatever way that they choose and may instill the belief system that they view as most appropriate. They may choose to pass on their religion to their children or not. They may also make educational choices for them (public, private, home-schooling, etc). In addition, they may want their children to be knowledgeable of certain cultural practices that may be outside the mainstream of the society in which they live. The state is neutral in these matters, though they may make some requirements. For example, with regard to education, the state may require education up to a certain grade level, but may also allow for a significant amount of choice in regard to particular schools (or, as mentioned, even schooling at home).

As one might expect then, child rearing has been one locus of the critique of liberal neutrality. As summarized by Thigpen and Downing (1983), neutrality regarding parenting poses contradictory goals for the liberal state: “there will be a conflict between some forms of primary education [provided by parents] and the preparation of the young for liberal citizenship. There would be no conflict if parents were liberals, but not all will be liberals” (597). Likewise, Steutel and Spiecker (2000) argue that the neutrality – and specifically Rawlsian neutrality – presents the state with incompatible demands. They argue that, on the one hand, the liberal state seeks to assure the development of future liberal citizens while at the same time remaining neutral with regard to parents’ conception of the good, whether liberal or illiberal.

Schoeman (1980), among others, defends family privacy – and disputes rights for children – on the grounds that such privacy provides the space necessary for intimate relationships to flourish and argues that “prospect of state intervention into a relationship depresses the sense of security in the relationship” (15). Brennan and Nogge (1997) object to

this view, writing, “Our most central disagreement with the anti-rights position of Schoeman and others is over the claim that talk of rights is somehow incompatible with deep personal relationships” (14-15). To the contrary, they argue that a right may be justly overridden – even parents’ rights – when it conflicts with a stronger right. Of course, the question of what constitutes a ‘stronger right’ is obviously open to judgment and debate. Likewise, De Wize (2000) argues that the private sphere does not “preclude the use of political power to enforce civil rights, prevent the abuse of women or children, but it does mean that every reasonable moral doctrine can decide for itself the structure, form and place of the family in their pursuit of the good life” (272). As with Rawls, then, there is a sort of ambiguity about how much latitude this stipulation allows for moral doctrines and what constitutes “abuse.” Nonetheless, the author comes to the strong conclusion that “[i]t is entirely consistent to argue that the family is in the private sphere but subject to political interference when activities within that domain threaten to undermine a citizen's civil rights” (272). However, with regard to children, it is not entirely clear what constitutes a rights violation – a problem to which I turn later in this chapter.

Most beliefs that parents seek to instill in children are of public concern because they affect *other people*, either for good or for ill. For example, if parents teach their children to follow the Golden Rule, then we might expect that, all things equal, those children will grow up to be citizens who will respect others and treat them well. On the other hand, if parents imbue their children with racist beliefs, we might expect that those children will grow up to be citizens who mistreat citizens of differing races. There are other cases, however, in which particular beliefs communicated to and ingrained into children have insidious effects on the children themselves. Brighthouse (2002) and Noggle (2002) both focus on this concern and both argue that parents must not be allowed to curb the child’s development of agency, which he says includes

the development of a sense of justice and the ability to author and revise a conception of the good (aka, Rawls' "two moral powers").

This chapter will discuss just such a particularly troubling case in which children's future agency, as well as their current welfare, is at stake. People who possess, as a part of a comprehensive religious or moral doctrine, a belief that homosexuality is immoral or in some other way inferior to heterosexuality may, either deliberately or inadvertently, seek to instill such a belief in their children. While this indoctrination can and almost certainly does create the kind of outcomes described in the above scenario – that is, it creates citizens who tend to mistreat other citizens on the basis of sexual orientation – it can also have a particularly disturbing effect on the welfare and future agency of children *themselves* if they are gay, lesbian or bisexual. This will almost certainly be true whether or not the child has yet to realize or acknowledge his or her homosexual or bisexual orientation.

For the child who acknowledges non-heterosexual orientation to parents who oppose homosexuality on moral grounds, the resulting outcome can obviously be devastating. While we might expect such devastation to cut both ways – that is, for both the parent and the child – this chapter is concerned about the effects with regard to children. The parents may, intentionally or unintentionally, disparage the child because of his or her sexuality. The parents may demand that the child "not be gay." They may demand that the child 'change' his or her orientation through religious counseling or so-called 'reparative therapy.' Such rejection of a child's sexual orientation – something the child has no control over – can result in hopelessness and depression and is perhaps a contributing factor in the inordinate amount of suicide attempts that gay teenagers make (more on this later).

Clearly, we are presented with a quandary over two conflicting and compelling goals. On the one hand, we hold the welfare of children and their development as future autonomous citizens to be a priority. On the other hand, we strongly believe that as a matter of conscience people may hold any comprehensive moral or religious doctrine they so choose and, further, that they may use that doctrine to guide them in the endeavor of raising children. The following question then arises: Given the limitations on public intervention in the home that neutrality and the liberty of conscience necessitates, can Rawls' theory address the needs of gay, lesbian, and bisexual children who live in households which reject their sexual orientation?²

This chapter will proceed as follows. First, I will examine parents' and children's liberties from Rawls' and Rawlsian scholars' perspectives as well as the seeds of conflict that lie therein. Next, I explore the plight of gay children in households where homosexuality is rejected and consider the conflict that this situation presents as being one between two of the basic liberties, liberty of conscience and freedom of the person (freedom from psychological oppression). I then proceed to consider the possibilities of adjudicating this conflict within Rawls' framework. Ultimately, Rawls' non-ideal theory both offers the resources necessary to resolve the problem and obligates us to act on behalf of the affected children.

Parents' Liberty, Children's Liberty, and Sexual Orientation: A Recipe for Conflict?

² It is possible that this question could also be extended to transgender children. Though I do not address them directly in this chapter, I think that their concerns often overlap with the concerns presented. The question of the liberties of transgender minors is certainly worth addressing in a separate, dedicated work.

Like all citizens, parents enjoy a host of basic liberties including equal liberty of conscience in Rawls' contract polity. He explains that this liberty "ensures the integrity of [citizens] religious and moral freedom" (TJ, §33). He provides a strong defense of such a liberty, noting that even extreme religious or moral views are to be tolerated as long as they do not threaten the public order (more on this below). Exemplifying this defense, he pointedly rejects Rousseau's claim that it is impossible for people to live peacefully alongside others whom they considered to be damned (TJ, §34). This understanding of liberty of conscience carries through to his later work in *Political Liberalism* in which he asserts that all privately held comprehensive religious and moral doctrines, no matter how extreme, are acceptable as long as they do not make their way into public reasoning and political conceptions of justice. We can therefore conclude that parents, like all citizens, are free to hold any (or no) comprehensive moral doctrines so long as they are not a risk to public reason and public order.

In his *Theory of Justice*, Rawls also provides a schematic of children's moral development that is clearly directed, at least in the first and second stages, by parents (TJ, §70-72). It seems reasonable to assume that parents will draw upon their comprehensive moral and/or religious doctrines in directing this moral development. Insofar as parents enjoy liberty of conscience, then, such a liberty is directly related to the rearing of their children. In fact, it appears that liberty of conscience provides the grounds for the freedom to raise one's children within the moral framework of one's choice subject to the constraints regarding the keeping of public order. Brighouse and Swift (2006), while writing about liberalism more broadly, argue much the same that "[parents] have a legitimate interest in being able deliberately to influence their children's values and beliefs insofar as they can do so without compromising the child's prospective autonomy. This interest follows partly from their duty to foster the moral

development of their children” (104). Whether the limit that the authors place on parents’ influence – “they can do so without compromising the child’s prospective autonomy – is present in ideal Rawlsian liberal theory is not entirely clear (a point I consider below), but the point is well taken: parents legitimately draw upon their considered moral and religious beliefs for guidance in raising their children. In addition, they seek to instill these beliefs in their children.

Liberty of conscience in the context of parenting takes on a unique dimension. That is, rather than it being solely a matter of personal autonomy, a parent’s freedom of conscience has a direct bearing on the autonomy, albeit prospective, of another – namely the parent’s child. This dimension highlights a feature of parenting that is otherwise strictly prohibited in Rawls’ framework. That is, one citizen’s freedom of conscience is not generally allowed to affect (at least adversely) the autonomy of another without his or her consent. For example, one might use one’s free speech to talk about their religious convictions and this exercise may inspire others to religious conversion. Perhaps this conversion could even be to a religion with tenets that ultimately curtailed the new recruits’ autonomy. Nonetheless, such exercise of conscience by the religious proselytizer would not constitute a violation of the liberty of the new recruits. On the other hand, if the proselytizer were instead to use intimidation or coercion in his or her conversion efforts, such actions would certainly constitute a liberty violation. Clearly in the public sphere, such an occurrence would constitute an unreasonable comprehensive doctrine in action and would thus be prohibited. In the private sphere, particularly in the parent-child relationship, the prohibition is less certain within Rawls’ framework.

However, amid this conundrum, Bojer (2000) interprets Rawls’ social contract framework to “impl[y] concern ... for children as subjects in themselves” (24) and remarks that is “capable of treating children as fully human beings and as independent subjects of justice”

(30). While that is perhaps true, it is not altogether clear what liberties children possess as human beings in the Rawlsian social contract framework. Further, it is also unclear how those liberties fare when they are at odds with the liberties of adult authority figures. I now turn to a consideration of whether the liberty of children includes a freedom of the person, as Rawls understands it, and whether that liberty protects their budding sexual identities.

Rawls' first principle of justice states "each person is to have an equal right to the most extensive total system of equal basic liberties compatible with a similar system of liberties for others" (TJ, §11).³ He proceeds to enumerate these liberties:

Important among these are political liberty (the right to vote and to hold public office) and freedom of speech and assembly; liberty of conscience and freedom of thought; freedom of the person, which includes freedom from psychological oppression and physical assault and dismemberment (integrity of the person); the right to hold personal property and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law.*(ibid.)*

Rawls also states, though without elaboration, that children possess a "lesser liberty" (TJ, §39) than do adults due to their nascent reasoning abilities.

Rawls provides some, though by no means extensive, indication in his earlier work regarding what the "lesser liberty" of children might substantively mean. Indeed, Abbey (2007) remarks, "The important question of children's status in justice as fairness is not broached on the grounds that it deserves detailed consideration in its own right" (11). However, in *a Theory of Justice*, Rawls does take into consideration justifications for paternalistic treatment of children and other pre-rational and/or partially rational persons. He writes that, within his framework:

^{3 3} Here is a complete list of the abbreviations I use for the works of Rawls: TJ = A Theory of Justice; PL = Political Liberalism; IPRR = "Idea of Public Reason Revisited;" The page numbers cited for IPRR are from Rawls' *Collected Papers* (1999).

[T]he principles of paternalism are those that the parties would acknowledge in the original position to protect themselves against the weakness and infirmities of their reason and will in society. Others are authorized and sometimes required to act on our behalf and to do what we would do for ourselves if we were rational, this authorization coming into effect only when we cannot look after our own good. Paternalistic decisions are to be guided by the individual's own settled preferences and interests insofar as they are not irrational, or failing a knowledge of these, by the theory of primary goods. As we know less and less about a person, we act for him as we would act for ourselves from the standpoint of the original position.(TJ, §39)

So from the point of view of an agent in the original position, paternalism might indeed be a desired component of a social contract under certain conditions. One such condition may be that of childhood wherein, particularly in the earliest stages, reason and agency are chronically underdeveloped. In this case, we would rationally want someone to act in a paternal manner to secure primary goods on our behalf.

The last sentence of the above quoted passage calls for particular examination with regard to children. In childhood, rather than knowing "less and less about a person," the opposite occurs as the years pass. We begin to know more and more about the person and his or her preferences. This increase in knowledge suggests that a diminishing paternal estimation is required with regard to the minor's preferred primary goods as those goods become more and more clear. Gutmann (1980) offers a useful interpretation:

Primary goods on my interpretation are not timeless or universal. They reflect a common understanding within society of what goods rational individuals, ignorant of particular interests, would want provided for them within that society. Some adults within our society may reject the standard of primary goods, but it can still guide our actions toward children – whose preferences cannot be treated as settled – since primary goods are likely to insure the

greatest range of reasonable choice for them as adults within our society. By this standard, children are not “mere creatures” either of their parents or of the state, since our behavior toward children must be regulated. Primary goods thus define children’s rights over us and our paternalistic duties toward them.(341)

Thus, we can understand children in the Rawlsian social contract by thinking of ourselves at their age and reflecting on what we now know, as fully rational adult citizens, in terms of which primary goods we would have been necessary at that age. And we can recognize that those primary goods are particular to a transitory period of development wherein preferences range from unintelligible at the earliest age to adult-like, in both their permanence and importance to our autonomy, at the latest stages of adolescence.

Gutmann (1980) goes on to argue that the kind of primary goods that children require in a liberal polity are ones that leave open a wide array of possible conceptions of the good:

While parents often do give their children some of the essential goods of life, they still have a duty to permit, if not to prepare, their children to choose among a range of conceptions of the good life that differ substantially from those held by the family. As citizens of a society offering a broad range of choices to its adult members, parents have an obligation to allow their children to be exposed to the choices available in their extra-familial society.(342)

This assessment strikes me as quite faithful to Rawls’ theory as it emphasizes children’s future autonomy and seeks to enrich the prospects of that autonomy rather than hobble those prospects. Indeed, Rawls notes that parties in the original position “will want to insure themselves against the possibility that their powers are undeveloped and they cannot rationally advance their interests, as in the case of children” (TJ, §39).

In his later work, Rawls explicitly denies that the family, nor any other association, can justly violate the basic liberties of its *adult* members. In *the Idea of Public Reason Revisited*, he is clear on this point:

Even if the basic structure alone is the primary subject of justice, the principles of justice still put essential restrictions on the family and all other associations. The adult members of families and other associations are equal citizens first: that is their basic position. No institution or association in which they are involved can violate their rights as citizens.(IPRR, §5.3)

This statement, while Rawls' most clear on the subject of the internal workings of the family and its relationship to the first principle, does not put to rest the question of *how* familial violations of the basic liberties should be addressed. In addition, with particular interest to the topic of this chapter, it does not tell us how children's basic liberties are to be regarded, if at all. Shortly after the above passage, Rawls makes the following statement that does provide some helpful, though not completely determinate, insight on the subject. He writes:

The principles defining the equal basic liberties and opportunities of citizens always hold in and through all so-called domains. The equal rights of women and the basic rights of their children as future citizens are inalienable and protect them wherever they are. ... So the spheres of the political and the public, of the nonpublic and the private, fall out from the content and application of the conception of justice and its principles. If the so-called private sphere is alleged to be a space exempt from justice, then there is no such thing. (IPRR, §5.3)

It is clear that Rawls primary aim here is addressing the stinging criticism of Okin and others regarding justice, women, and the family. However, his statement about the basic rights of "children as future citizens" is both informative and forceful in that these rights are "inalienable and protect them wherever they are." While it is not clear what these basic rights are, we get some purchase from the specification, "as future citizens." That is, these rights go beyond the

immediate concerns of, for example, food and shelter, and extend to what children will need in the future as adults.

In consideration of Rawls' statements on the subject and the cited Rawls scholarship, it seems that children can be understood to have a kind of liberty that safeguards their *future* liberties in an effort to ensure their ability to both conceive of, as well as to pursue, a broad range of conceptions of the good. Paternalism is then certainly justified on a 'sliding scale' in which more paternalism is required early in childhood and less is required over time as a child matures, becomes more rational, and his/her preferences become more apparent. But that paternalism should be tempered by a conception of what we would want – and not want – as children in terms of primary goods from point of view of the original position. Certainly we cannot conceive of placing children in the original position, but as Gutmann suggests, we can conceive of ourselves as adults in the original position making judgments about what we would want (or would have wanted) in terms of primary goods for our childhood selves.

One such example of a primary good we would want, at least as we reach adolescence, would be the ability to explore alternatives to the religion that our parents have embraced and within which we have been reared. This exploration might include access to the holy texts of other religions. It might also include the ability to attend the worship services of those other religions. Such an ability to explore other faiths would prepare the way for our exercise of liberty of conscience in adulthood.⁴

Another such primary good, I argue, is the liberty of our sexual identity, free of parental reprisal and condemnation. When one considers the role that sex, intimacy and romantic

⁴ The Amish, for example, observe *rumspringa*, which allows adolescents a wide degree of latitude up to, and including, leaving the community for a time to experience non-Amish life. The adolescents are then allowed to choose whether to make an adult commitment to membership in the church. See Shachtman (2006).

relationships play in life, it may be easy to understand how the liberty of one's sexual identity is a primary good for adults. What may be less clear is how such a liberty is a primary good for children and, in particular, adolescents. To be clear, the concept of liberty of sexual identity as understood here is, at least for minors, not meant as a license for sexual behavior. It instead concerns the ability to acknowledge and embrace one's sexual orientation. Heterosexual adolescents, for example, often freely express their sexual identity in a multitude of ways that are otherwise completely pedestrian and unremarkable. They talk about having "crushes" on their classmates. They may ask someone to whom they are attracted to accompany them to a dance. They may opine about future romances and about whom they would like to marry someday. These may not seem like particularly important or controversial activities. However, these activities are important to adolescents, not in a merely fleeting sense, but as a way of beginning to understand themselves as sexual beings and to begin to author an important component of their plan of life. These sorts of expressions can quickly become controversial when they are homosexual in nature, particularly when homosexuality is rejected in the adolescent's home.

When a gay child is raised in a household headed by parents who hold comprehensive moral or religious doctrines that hold homosexuality as immoral or sinful, the child's sexuality can easily become a point of conflict. On the one hand, parents appear to have the freedom, grounded in their liberty of conscience, to reject the burgeoning sexuality of their child and to make demands upon the child in response. On the other hand, a child's future autonomy is contingent upon at least some measure of liberty of person in childhood. In this case, we might expect that such liberty should provide the grounds for protection of a child from the psychological oppression of parental rejection, hostility and chastisement (and worse).

This conflict is no light matter. What is at stake for parents is the right to raise their children guided by a doctrine that may be central to their way of understanding the world around them and which provides a system of values that may serve as the foundation of their conception of the good. Further, as the primary source of morality in a child's life, parents play a unique role that both obliges them to direct their children's upbringing and endows them with the authority and privacy to do so. However, children also have much at stake. First, their present well-being is a matter of concern. Second, their future ability to function as autonomous persons is at risk. This second concern is both separate from, yet related to, the first. That is, without securing a child's well-being in the present, concern about their future autonomy in adult life becomes nearly irrelevant.

At first glance, in order to judge such a conflict, we may reflect on Rawls' demand that liberties be arranged "compatible with a similar scheme of liberties for others." This stipulation does well to explain conflicts of liberties between autonomous adults. However, it does not instruct us about the proper way of adjudicating conflicts between liberties such as the one that I am describing. The facet of this conflict that complicates the issue is that it is one between the liberties of parent and of child, which requires the weighing of adult liberties against those of a child. Further, the child is subordinate to, and dependent upon, the adult in question. The conflict appears to boil down to the following: Does parental liberty trump a child's liberty? Or, put another way, does a parent's present autonomy trump a child's present well-being and future autonomy? Certainly in cases of outright abuse, this answer is obviously "no." But the case I have described is one in which a parent may truly believe that their moral or religious doctrine – which they are clearly at liberty to hold – dictates a certain behavior toward their children and that this treatment is what is in the best interest of the child. Before undertaking a close

examination of how this conflict may be resolved, I first turn to a closer investigation of the conflict itself and its consequences.

Psychological Oppression vs. Freedom of Conscience:

Gay Children in Anti-Gay Homes

In this section, I will consider whether parental rejection of, and hostility towards, homosexuality constitutes psychological oppression of gay and lesbian children. Rawls lists freedom from psychological oppression as a basic liberty, but does not provide any description of what constitutes such oppression. Some purchase can be gained by noting that he lists it, under the umbrella of 'freedom of the person,' alongside freedom from physical assault and dismemberment (TJ, §11). We can draw from this grouping that psychological oppression surpasses the everyday trials of life such as, for example, disappointment or frustration. Rather, psychological oppression is constituted by a traumatic and lasting injury to the person, psychologically, as an assault or dismemberment might do physically. So we might then ask whether a gay child experiences this kind of trauma when her parents act in a rejecting and hostile way toward her because of her sexuality. That is, we may inquire what specific injury occurs and whether it is particularly traumatic and lasting.

To begin the inquiry, we should note that Rawls emphasizes self-respect as the most important primary good and provides the following explanation of both what it is and why it has such weight:

We may define self-respect (or self-esteem) as having two aspects. First of all, as we noted earlier (§29), it includes a person's sense of his own value, his secure conviction that his conception of the good, his plan of life, is worth carrying out. And second, self-respect implies a confidence in one's ability, so far as it is within one's power, to fulfill one's intentions. When we feel that our

plans are of little value, we cannot pursue them with pleasure or take delight in their execution. Nor plagued by failure and self-doubt can we continue in our endeavors. It is clear then why self-respect is a primary good. Without it nothing may seem worth doing, or if some things have value for us, we lack the will to strive for them.(TJ, §67)

Rawls makes clear here why self-respect is not just *a* primary good, but why it is *the primary* of primary goods. If we lack self-respect, everything else of value in our lives falters as well.

One way in which our self-respect is injured is via the mechanism of shame. Rawls outlines two different types of shame, natural and moral. Natural shame arises from what Rawls refers to as “blemishes in our person” that prohibit us from pursuing a chosen plan of life (TJ, §67). As an example, he notes that persons without musical talent who have no interest in being musicians correctly feel no shame about lacking such a talent. The converse is also true – an aspiring musician who, for instance, lacks rhythm might rightly feel natural shame. However, he or she may also adjust their plan of life in response to such a shame. In terms of sexual identity, then, one might feel a kind of natural shame if one’s plan of life specifically required a particular sexual orientation that one does not possess. The point here is that natural shame occurs only relative to one’s own plan of life, which is of course adjustable to the resources available to a given person.

On the other hand, moral shame arises with regard to virtues, which Rawls defines as “the strong and normally effective desires to act on the basic principles of right” (TJ, §66). When one’s “[a]ctions or traits manifest or betray the absence of these attributes” moral shame is likely to occur (TJ, 67). Rawls gives the example of someone who cheats and then feels ashamed. He writes that this moral shame occurs because the person “has betrayed a lack of the moral excellence he prizes and to which he aspires” (*ibid.*). Rawls notes that such shame serves to “undermine our self-esteem and the esteem that our associates have for us” (*ibid.*).

Comprehensive moral doctrines that condemn homosexuality appear to view sexuality as a kind of excellence and heterosexuality itself as a virtue. It is an odd kind of virtue that requires no particular action other than feeling an attraction toward members of the opposite sex. Within such a doctrine, a contrary sexuality –that is, an orientation toward members of the same sex – is then deemed a failure to attain this particular virtue. As noted above, moral shame requires both an injury to one's self-esteem as well as an injury to the esteem that our associates possess for us. It is clear how moral shame about sexuality may involve the loss of esteem of associates – and of particular interest for this chapter, specifically family members – who possess a particular comprehensive moral or religious doctrine that rejects homosexuality. We can also imagine that an adolescent who has been raised with that same doctrine may also experience an injury to his self-esteem when he realizes he is gay.

We might then ask what kind of outcomes may arise from this loss of both self-esteem and the esteem of one's family. What happens when, early in life, one faces condemnation from her primary authority figures over a trait, which he neither chose nor can change? Is there a loss of a sense of one's own value? Does it seem possible or even worthwhile to conceive of a plan of life? In short, does life become hopeless?

Empirical work on the topic in sociology and psychology provides answers to these questions. A recent study (Ryan, et al. 2009) indicates that family rejection of gay, lesbian, and bisexual adolescents are significantly associated with poorer outcomes for young adults. Homosexual and bisexual adolescents who experience such rejection in the home are more than eight times more likely to attempt suicide than their heterosexual peers. In addition, they are nearly six times more likely to report high levels of depression. It seems that what underlies such disparate outcomes is the damage to one's self-esteem that accompanies familial rejection

as other studies reveal that family acceptance predicts greater self-esteem and general health, which ultimately leads to lower rates of depression, substance abuse, and suicidal ideation and behaviors (D'Augelli, A. R., 2002; Rosario, Schrimshaw, & Hunter, 2009; Ryan, et al. 2010).

In light of such findings, it seems clear that when a child faces parental condemnation of his or her sexuality, they do indeed experience a devaluation of self and a loss of confidence in his or her plan of life. One might ask if such a situation merely represents a matter of child abuse, in which case, public authorities could easily justify intervention in the family. However, the situation is more complicated because it involves, inherently, parents' freedom of conscience. So while the (mis)treatment that children may experience as a result of their sexual orientation may be viewed as a kind of abuse, it is an abuse that is often firmly grounded in a matter of conscience on the part of the parents. While clashes between comprehensive moral or religious doctrines are one of Rawls' chief concerns, the situation I am describing here is of a different sort. It is a conflict between a comprehensive moral doctrine and an immutable human trait.

Adjudicating the Conflict

Liberty of conscience is not unlimited. Specifically, Rawls explicitly places one particular limit on liberty of conscience. He writes:

Liberty of conscience is limited, everyone agrees, by the common interest in public order and security. This limitation itself is readily derivable from the contract point of view. ... Furthermore, liberty of conscience is to be limited only when there is a reasonable expectation that not doing so will damage the public order which the government should maintain.(TJ, §34)

Here, Rawls foreshadows the concerns of his later work (in *Political Liberalism*) in which he emphasizes the distinction between public and private reason. His concerns here appear to center upon the stability of public institutions. With his repeated emphasis on public order, it

appears unlikely that the internal workings of the family would come under the purview of such a limit. Instead, the purpose of this stated limit on liberty of conscience seems to be to ensure that intolerant, illiberal sects are not allowed to overturn the liberal polity (see TJ, §35).

Still, we should consider Rawls' statement later in the same section of the text in which he writes: "The limitation of liberty is justified only when it is necessary for liberty itself, to prevent an invasion of freedom that would be still worse" (TJ, §34). He further elaborates that in the next section that "...members of a well ordered society have the confidence to limit the freedom of the intolerant only in the special cases when it is necessary for preserving equal liberty itself" (TJ, §35). How are we to understand these stipulations with regard to conflict in the family between parent and child over sexual identity? Can we interpret a liberty of sexual identity of children, grounded in the basic liberty of freedom from psychological oppression, to fall under the criterion of equal liberty that must be protected from encroachment? And if so, how do we judge such an encroachment when it stems from their parents' liberty of conscience, which is itself a basic liberty? It appears that, at least in the ideal realm, Rawls' theory cannot offer a solution to this conflict. This should come as little surprise as it involves children, whom are, by definition, in a temporary but very real state of natural limitations. Such limitations clearly signify a non-ideal condition.(TJ, § 39) It is necessary, then, to turn to a discussion of non-ideal theory to which I now turn.

Early in *Theory of Justice*, Rawls make a key distinction between ideal theory and non-ideal, or partial compliance, theory. He stipulates that non-ideal theory addresses the "pressing and urgent matters. These are the things that we are faced with in everyday life. The reason for beginning with ideal theory is that it provides, I believe, the only basis for the systematic grasp of these more pressing problems" (TJ, §2). This chapter has thus far explored Rawls' ideal

theory and sought to understand the conflict between parents who embrace an anti-gay comprehensive doctrine and children who are, themselves, gay. Rawls' ideal theory has helpfully aided us in understanding this conflict as one that arises between two basic liberties, liberty of conscience and freedom of person (freedom from psychological oppression). What ideal theory cannot provide for us here is a solution to this problem because the circumstances involve children and ideal theory is the realm of competent, economically productive adults.

Rawls provides a few examples of his non-ideal theory in action, yet none of them address non-ideal conditions within the institution of the family. It seems that Rawls is hard-pressed to imagine an ingrained and systematic mistreatment of children based upon a possessed trait that we now know to be a fairly common one across cultures, regions, and generations.

Indeed, he even remarks:

These principles do not inform us how to raise our children, and we are not required to treat our children in accordance with political principles. Here those principles are out of place. Surely parents must follow some conception of justice (or fairness) and due respect with regard to their children, but, within certain limits, this is not for political principles to prescribe. Clearly the prohibition of abuse and neglect of children, and much else, will, as constraints, be a vital part of family law. But at some point society has to rely on the natural affection and goodwill of the mature family members. (IPRR, §5.2)

And yet, in the case I have described, we are faced with circumstances in which the natural affection or goodwill, though surely not absent, are not reliable guarantors of children's welfare, liberty, or future autonomous agency. In such circumstances, the particular conception of justice that the parents have embraced has not secured justice for their children, but has instead served injustice to them. Presciently for this topic, Rawls points out that "those who act unjustly often do so with the conviction that they pursue a higher cause" (TJ, § 39).

Imagine for a moment the following scenario: One individual tries to enforce a law, arrived at not through public reason but from private moral doctrine, against another individual. In such a situation, we could clearly judge the first individual to be in the wrong. In fact, this case would not *necessarily* even constitute a need for non-ideal theory assuming that the first individual was not part of a larger group seeking to forcefully impose its will on the rest and, thus, endanger public order. The public laws created under ideal theory could restrain a single individual from such an imposition of his or her will upon another. As Rawls writes:

From the standpoint of justice as fairness it is not true that the conscientious judgments of each person ought absolutely to be respected; nor is it true that individuals are completely free to form their moral convictions. These contentions are mistaken if they mean that, having arrived at our moral opinions conscientiously (as we believe), we always have a claim to be allowed to act on them. ... We are not literally to respect the conscience of an individual. Rather we are to respect him as a person and we do this by limiting his actions, when it proves necessary, only as the principles we would both acknowledge permit.
(TJ, §78)

It is clear then that liberty of conscience does not justify *any* action of one individual upon another. Rather, such actions must still come under the scrutiny of public reason.

However, in the case I have been describing in this chapter, the first individual is a parent, while the second is a child of that parent and is therefore thought, in general, to be subject to parental directives. This assumption would, under ideal conditions and full compliance, be both uncontroversial and necessary. However, if children's welfare and future autonomy should be protected – and they should be – then parent's liberty of conscience must be curbed in this case. As Brighouse and Swift (2006) argue:

[C]hildren have a fundamental interest in prospective autonomy. Parents may not legitimately indoctrinate their children, but they do have a legitimate interest

in being able deliberately to influence their children's values and beliefs insofar as they can do so without compromising the child's prospective autonomy. This follows partly from their duty to foster the moral development of their children.(104)

The condemnation of gay, lesbian, and bisexual children on the grounds that their sexualities are a violation of a comprehensive moral or religious doctrine constitutes a violation of the children's future autonomy. Under conditions of strict compliance, such a violation would not occur. However, the partial compliance displayed both authorizes and requires restraint of the parents' liberty of conscience and, as it is they that are the most vulnerable, requires protection of children's freedom of person and, therefore, their future autonomy. This conclusion is in keeping with Rawls' stated assumption "that it is always those with the lesser liberty who must be compensated. We are always to appraise the situation from their point of view" (TJ, §39).

Whether under ideal or non-ideal conditions, Rawls emphasizes the necessity of recognizing and addressing injustices. He asserts, "Thus as far as circumstances permit, we have a natural duty to remove any injustices, beginning with the most grievous as identified by the extent of deviation from perfect justice" (TJ, §39). He goes on to admit that "this idea [of non-ideal conditions] is extremely rough" and that the "measure of departures from the ideal is left importantly to intuition" (*Ibid.*). The circumstances at hand involve children and are therefore the territory of non-ideal theory. As suggested above, we can use a modified Original Position to guide our intuition as to what would constitute an ideal condition for children in terms of primary goods. Then, we can act in a way that moves toward that ideal and it is our duty to do so.

Concluding Thoughts

From a practical standpoint, it's obviously unrealistic to regulate parental approval of their children. Parents may express disapproval of their children for various reasons that, from the point of view of outsiders, may seem either reasonable or ridiculous. However, in cases where the disapproval is rising to the level of endangerment of children, public authorities may rightly intervene. This prescription is hardly controversial with regard to cases of physical or emotional abuse in the home – no liberal of any stripe would object to state intervention in such cases. However, the mistreatment of gay, lesbian, and bisexual children is generally not recognized as abuse as it is often grounded in moral or religious principles of some sort. This grounding shields from public scrutiny practices that have been shown to be destructive to the well-being of children. How else can we explain the continued enrollment of children into discredited “reparative therapy” programs that claim to change sexual orientation and that clearly cause harm? Why do major American religious and political figures feel comfortable publicly and routinely claiming that ‘homosexuality is a choice’ and therefore can – and should – be changed? And why does the suicide rate of homosexual and bisexual teenagers continue to be so alarmingly high in comparison to their heterosexual peers?

I would therefore suggest that public authorities implement outreach programs for such at-risk youth and to take seriously – as seriously as they would take physical abuse – complaints from gay, lesbian, and bisexual youths of mistreatment in the home. In addition, though such actions would be prohibited by ideal theory, in the case I have described it is necessary for the state to sponsor public education campaigns to counter the claims of some religious and moral comprehensive doctrines that condemn, reject, and devalue the lives of gay youth. While it may be difficult to completely counter the psychological oppression of children wrought by

doctrinaire teachings in the home, such efforts could serve as a cause for hope for adolescents who desperately need one.

Despite clearly unjust conditions for gay kids in anti-gay homes, there is clearly cause for optimism that the conditions will not persist indefinitely. There are definite and sustained generational differences in opinion regarding homosexuality, with younger adults showing more acceptance and support for the rights of sexual minorities. In addition, some religious denominations that once rejected homosexuality have amended their doctrines to become inclusive. Rawls' expressed hope in his non-ideal theory is that non-ideal solutions can move us toward an ideal condition. Likewise, I see cause for hope in remedying the non-ideal condition that we find with respect to lesbian, gay, and bisexual children in anti-gay homes.

Much is made of neutrality in Rawls' thought and in liberal thought more generally. In many ways, state neutrality with regard to a conception of the good is of great benefit to gay, lesbian, and bisexual adults. However, in the case of children, due to their dependence on adults and their incomplete autonomy, the benefit is less clear. And, in the unfortunate case of gay kids living in anti-gay homes, if we allow "neutrality" to mean "indifference," then we will ultimately fail in our duties to them.

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