

## CHAPTER 10

# Should Foster Care Replace the Family? Child Welfare and the Value of Family Privacy

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**Abstract:** Privacy is a central characteristic of the family, and while there are reasons to value family privacy, it is also regarded as an obstacle to justice in the family ethics literature. Because family life is protected from intervention by external agencies, parents' resources and caregiving practices may have a profound impact on the child's rights and opportunities. Given these considerations, the family may be an obstacle to equality of opportunity and the protection of children's rights. Accordingly, a central question is how to justify child-rearing in families. A commonly held conclusion in the family ethics literature is that the family is preferable to alternatives like residential institutions or communal child-rearing. Existing contributions do not discuss more moderate alternatives, though, where problems of the family are addressed by enhancing the presence of state agencies in family life. In this chapter, I explore that possibility by asking if organising families as foster homes is less morally objectionable than raising children in families. I discuss three strategies for rejecting the suggestion: a child-centred approach, a dual-interest approach (taking into account both the child's and parents' interests) and a Rawlsian approach based on the value of reasonable pluralism in child-rearing. I argue that only the third strategy gives us a plausible solution to resist the foster care model I explore.

**Keywords:** family ethics, privacy, foster care, children's interests, parental interests, reasonable pluralism

## Introduction

Child welfare services (CWS) in Norway and other European welfare states are usually based on a family presumption: that the family is and should be the basic child-rearing arrangement in society. In accordance with this presumption, official services such as the CWS have subsidiary responsibility for children, and should not intervene in family privacy and family life except in very serious cases. Thus, not only does this family presumption express the superiority of the family as a child-rearing arrangement, it also supports a particular form of family: a *private* arrangement where parents have considerable control and state agencies have limited access.

The family presumption is supported by widely held convictions about the value of the family as a private arrangement. Not only does the family seem better than other arrangements in raising independent and productive citizens but, for many of us, the family is a protected haven where we can be free from the gaze of others, cultivate intimate relationships and pursue our projects without external interference. However, as David Archard notes, the protected privacy of the family ‘... is also what can make it a place of danger’ (Archard, 2010, p. ix). The protected privacy of the family gives parents the liberty to make their children’s lives miserable. From this viewpoint, family privacy and parental control are plausibly regarded as obstacles to the protection of children and their interests.

Insofar as family privacy only implies danger for a minority of children, it does not undermine the family presumption in general. However, in the family ethics literature, family privacy is also associated with a more general problem, namely that ‘... children born into different families face unequal prospects’ (Brighouse & Swift, 2014, p. 2). While perhaps not a problem for all types of families, this objection targets the family as a private arrangement, since protection against intervention from external agencies in family life is likely to enhance the impact parents’ resources and caregiving practices have on the child’s rights and opportunities.

The problems just outlined are recognised by a number of egalitarian philosophers, who plausibly regard these problems as sufficiently weighty to raise questions as to the justifiability of raising children in families

(e.g. Blustein, 1982; Munoz-Dardé, 1999; Archard, 2010; Brighthouse & Swift, 2006, 2014). Those who address these problems usually pursue two lines of inquiry, often in combination: One strategy is to compare the family with other (imaginative) alternatives. Another is to consider whether there are grounds for accepting the family as a private arrangement despite the problems just outlined. A central claim in justifications for the family is that it is preferable to alternatives such as communal child-rearing or residential care institutions (e.g. Archard, 2010; Brighthouse & Swift, 2014). In particular, some argue that intimate adult-child relationships, both inherently valuable and vital for the satisfaction of children's needs, are more likely to arise in families than in arrangements with multiple parents or professionalised care (Brighthouse & Swift, 2014). For the sake of promoting intimate relationships, the family as a private, exclusive arrangement outperforms the alternatives.

This claim does not preclude the possibility that the family could be reorganised in a way that addresses the danger associated with family privacy without sacrificing the valuable family relationship. In this chapter, I explore that possibility. Instead of abolishing the family altogether, I ask whether it would be preferable to moderately increase the presence of state agencies such as the CWS in family life. Specifically, the suggestion is to reorganise families along the lines of a foster care model. The question I pursue is whether it would be better to organise *all* families like foster care. In what follows, I first defend this proposal in light of the problems with family privacy outlined in the Introduction. Then I consider three different strategies for defending family privacy, and argue that it is implausible to reject the suggested remodelling of the family by appealing to the interests of children or the interests of parents and children. To defend family privacy, a third strategy, involving a Rawlsian liberal principle of toleration for pluralism in child-rearing, is more plausible.

## **Background: Three challenges to family privacy**

'The family' is an ambiguous term (see e.g. Gheaus, 2012, pp. 122–123). In this chapter, 'the family' refers to a small, private child-rearing arrangement with the following characteristics:

1. A multigenerational custodial arrangement, where the essential function is to raise children, and where one or a very small group of adults have primary responsibility for the child.<sup>1</sup>
2. Parental responsibility is exclusive; only adult family members are parents and have child-rearing responsibilities.
3. Non-consensual interventions in the family must be sanctioned by law and are only permissible if there is a risk that the child's parents will harm the child by acts or omissions.

In short, this notion of family (henceforth simply 'the family') refers to a legally protected custodial arrangement. This arrangement is in several ways private: family members have exclusive access to each other and to information about each other and the household. Parents have considerable discretionary power over access to the family and its members, and child-rearing practices. These aspects serve to distinguish the family from similar arrangements, and other arrangements that may involve adults and children and have a significant role in a child's upbringing. Relationships or arrangements that might otherwise resemble families, such as foster care, do not count as families unless they satisfy the criteria outlined above. The same applies to relationships we would regard as familial due to biological relatedness or by virtue of their intimate nature.

This chapter addresses the question of whether the family should be the primary child-rearing arrangement in society. In *Family Values*, Brighthouse and Swift present an affirmative answer to this question (2014). Specifically, they regard family privacy as a precondition for developing flourishing close personal relationships, and the goods such relationships can manifest. The goods associated with the family relationship – unconditional mutual love, intimacy, spontaneity and the way the parental role involves combining authority with love – are qualities Brighthouse and Swift call 'familial relationship goods'. All family members have reason to want these goods, but they are particularly important for children, for whom access not only affects their childhood but also matters for their development. Accordingly, the instrumental value of family privacy plays a significant role in their justification of the family as a child-rearing arrangement. Moreover, their defence of the family includes a comparative argument. Relationship goods are more readily available in the family than

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1 I have borrowed this criterion from David Archard (2010, p. 10).

in alternative arrangements such as residential institutions or communal child-rearing: The highly personalised bonds between parents and children that facilitate children's development are less likely to evolve if parents are trained or guided, and parent-child interaction scrutinised and evaluated. In their view then, children, parents and society in general have reason to favour the family over professionalised child-rearing or less private arrangements.

## Family privacy and inequality

The family is also a well-known obstacle to justice. The following problem stands out as particularly challenging: children born into different families face unequal prospects (Blustein, 1982, pp. 203–204; Munoz-Dardé, 1999, p. 40; Rawls, 1999a; Brighouse & Swift, 2014, p. 2). As John Rawls wrote, 'It seems that even when fair equality of opportunity [...] is satisfied, the family will lead to unequal chances between individuals.' (1999a, p. 448). Accordingly, he asked, 'Is the family to be abolished then?' (1999a, p. 448). While Rawls did not reach that conclusion, egalitarians, including Brighouse and Swift, have not dismissed the question (e.g. Munoz-Dardé, 1999; Archard, 2010; Brighouse & Swift, 2014). As Vallentyne and Lipson put it, '... if effective equality of opportunity is to be enjoyed by all, the family must lose some of its traditional decisionmaking powers for children' (1989, p. 27). In particular, family privacy and parental discretion are likely to matter significantly in the conferral of advantage or disadvantage: the privacy of the family ensures that family members, including the child, are highly dependent on the skills, resources and dedication of other members (Gheaus, 2018b). Since parents vary along these dimensions, the family is likely to both produce and sustain inequalities.

Brighouse and Swift's response is to claim that alternative arrangements like communal child-rearing or residential institutions will either limit children and parents' access to familial relationship goods, cut them off from these goods altogether, or involve unfair distribution of such goods. Because they regard familial relationship goods as important *distribuenda* of justice – or goods that we all have reasons to value (Brighouse & Swift, 2014, p. 147), there is a strong case against proposals involving diminished or unfair access to these goods. Accordingly, the importance of these goods explains how Brighouse and Swift can argue that the family should be preserved, despite its impact on other opportunities.

Although Brighthouse and Swift's discussion of potential alternatives is far from exhaustive, I shall assume that their views on the value of relationship goods and their status as *distribuenda* are correct. This leaves alternative arrangements, including the one I present below, with a dual challenge: to be compatible with both equality of opportunity and with the realisation of familial relationship goods.

## Family privacy and parental control

Family privacy and parental discretion also lie at the heart of another problem that concerns the appropriate distribution of freedom and authority between parents, children and the state, or *who* should have the right to decide *what* in relation to children's lives (Brighthouse & Swift, 2014, p. 2). The justifiability of almost all policies targeting children, families, or parents depends on arguments that establish that the suggested balance between parental authority, state authority, and the child's rights are appropriate and just (cf. Archard, 2010, p. 20). Thus, we might ask, is raising children in the type of family we have just outlined a reasonable way to balance these considerations?

Parents' interests seem well-protected by the family. The arrangement provides parents with protected privacy and the authority to raise their children according to their values and beliefs. Depending on the resources available to them, they will also possess significant control over the arrangement. Thus, parents can, in principle, control their level of privacy (although resources – including access to welfare services – may, in fact, limit their level of control). Children, on the other hand, are born into an arrangement over which they, at least initially, have little or no conscious influence. Within the family, children remain subject to their parents' care and decisions throughout childhood, in an environment where other adults have limited access. Most children probably benefit from this. But there is also a considerable minority of children who suffer within the confines of the family's private sphere. Moreover, the fact that serious neglect and/or abuse in the family can sometimes go on undetected for years illustrates the potential danger of this arrangement and the risks associated with family privacy.

The assumption that only some children suffer within the family may lead us to associate the risks children face in the family with parental factors, such as parents' mental health, educational level, income, etc. However,

risk is also a characteristic of the family arrangement itself. Thus, although risk is distributed unevenly, the family places all children at risk. Drawing on the work of Robert Goodin, Anca Gheaus provides an analysis of the nature of the family arrangement and the risk it poses to children (Gheaus, 2018a; Goodin, 1985). Goodin claimed that ‘... some dependency or vulnerability relationships pose greater threats of exploitation than do others’ (Goodin, 1985, p. 195). In particular, Goodin was concerned about relationships that satisfy all the following characteristics:

1. The relationship is asymmetrical in terms of parties’ power over each other.
2. The dependent party has a vital need for the resources provided by the other party.
3. The superordinate party exercises discretionary control over those resources.
4. The relationship in question is the *only* source of such resources for the dependent party. (Goodin, 1985, pp. 195–196)

In Goodin’s terms, relationships with these characteristics constitute morally objectionable dependency relationships. The problem with these relationships is that ‘... people in a vulnerable position are *exploitable* – not necessarily that they are exploited’ (Goodin, 1985, p. 194). Indeed, many relationships that satisfy these conditions are not characterised by exploitation or domination. Nevertheless, in relationships with these four characteristics, there is an exceptionally high risk of power abuse. Moreover, the risk associated with these dependency relationships is not restricted to power abuse or exploitation but includes failure to provide the resources the dependent party depends on. Thus, Goodin’s objections concern the *structure* of dependency relationships of the kind just outlined.

Gheaus argues that the family satisfies all four conditions of an objectionable dependency relationship. First, parents have power over their children. Second, children need love and affection, nourishment and discipline from their parents. Third, parents decide if, how and when the child’s needs should be satisfied, and they do so without external supervision. Finally, except in very serious circumstances, others do not intervene in the family to care for or protect the child. Parents have, in Gheaus’ terms, a ‘monopoly of care’ (e.g. Gheaus, 2018a, p. 4).

Goodin's and Gheaus' work helps us to identify a central problem with raising children in families, as well as how to address it. According to Goodin, moral objections to dependency relationships diminish insofar as they fail to display one or more of the four conditions outlined above (Goodin, 1985, p. 196). The question is which conditions to target. Since parent-child relationships are, at least initially, asymmetrical relationships where the child needs resources provided by the parent, possible targets are parents' discretionary control and their care monopoly. Gheaus' solution primarily targets the latter. Her suggestion is mandatory enrolment for children in day-care centres and schools (Gheaus, 2018a, p. 5). This might provide children with other independent caregivers and thus weakens the parental monopoly of care. Her proposal prevents parents from forbidding the child to form relationships with other adults, ensures that the child has access to an arena outside the family and increases the possibility of discovering serious cases of parental failure. Moreover, since her proposal leaves the structure of the family arrangement intact, her way of responding to objectionable dependency provides improved protection for children without sacrificing family privacy or the goods associated with family privacy.

The question is whether Gheaus' solution is sufficient. Given the prevailing problems of child abuse and neglect in societies where most children attend day-care centres and school is mandatory, this is a question worth further inquiry. One challenge, however, is to find suitable alternatives. Communal forms of child-rearing and institutional child-rearing have been discussed in the philosophical literature on the family (e.g. Blustein, 1982; Munoz-Dardé, 1999; Brighouse & Swift, 2014). Although such arrangements may address the challenges mentioned above, they do so at the cost of making a loving parent-child relationship less likely (cf. Brighouse & Swift, 2014, pp. 70–75). It is therefore less likely that such arrangements will provide children with the resources they need. Another way to terminate the monopoly of care is to make children members of (at least) two families, as in cases where divorced parents have joint custody. While this may be permissible in many cases, joint custody cannot be implemented as a generalised child-rearing arrangement without significant costs to our freedom to form and maintain personal relationships. However, exploring alternative child-rearing arrangements does not necessarily entail abolishing the family, replacing the family with institutional or communal child-rearing, or extreme levels of public intrusion in family



life (cf. Altman, 2018, p. 214). While intimacy surely requires some level of privacy and discretion, it seems possible, or so I shall argue, to moderately limit parental discretion and family privacy without undermining the goods of family life.

## The foster care model

Imagine a society like ours, where children are usually raised by their birth parents, but where the families are organised almost like foster care. Unlike orphanages and similar institutions, or communal child-rearing, the arrangement I have in mind does not involve separating the child from his/her parents or transferring parental responsibilities to professionals or the community, but requires parents and families to receive the same level of support, supervision and monitoring as foster parents. In this society, all families are subject to a moderate degree of monitoring and intervention by state agencies like the CWS. In contrast to the practice in Norway, for example, where suspected or identified risk makes some families subject to this level of state intrusion, this is the general arrangement in our imagined society.

The child-rearing arrangement in our imagined society resembles foster care, but there are important differences. To illustrate how these arrangements differ, it is helpful to first outline a foster care arrangement and then explain which elements are preserved in the child-rearing arrangement of our imagined society. A foster home is, first, ‘... a private home that accepts children for fostering’ (The Norwegian Child Welfare Act, 1992, Section 4-22).<sup>2</sup> Thus, like the family, it is a custodial arrangement. But foster care differs from the family in other respects:

1. Before taking on the assignment, foster parents are trained and approved (Ministry of Children and Equality, 2003, Section 3).
2. When a child is placed in foster care, parental responsibility is divided between the parents, the foster parents, and the CWS. The foster parents are responsible for the daily care of the child, but unlike in a family, the authority to decide in matters concerning the child is not limited to the parents.

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<sup>2</sup> This definition is taken from the Child Welfare Act (1992), now repealed. In the new Act of 2021, the wording has been slightly reformulated. See the Child Welfare Act (2021), Section 9-1.

3. The CWS visits the foster home at least four times a year. The CWS shall provide necessary advice, guidance and support for the full duration of the placement (Section 7).
4. Foster parents are supervised at least four times a year (Section 9). The municipality is responsible for appointing the supervisor, not the CWS.

A central difference between foster care and what I call ‘the foster care model’ of our imagined society is that the former is a paid, temporary assignment. The foster care model is not an assignment – parents do not sign a contract or receive payment, and the custodial arrangement is permanent. Also, unlike the foster care arrangement just outlined, becoming a parent does not depend on any form of licensing: birth parents have the right to rear. The division of responsibilities between parents and the state is also somewhat different. Given state agencies’ limited presence in the child’s life, the role of state agencies is limited to three purposes: to advise, support and initiate measures that protect the child’s best interests in cases where there is a risk of serious harm to the child. Like ordinary foster care, parents receive instructions and training prior to birth or adoption, they receive the same level of support as foster parents, and supervision is carried out by a third, independent party. Thus, the foster care model is, in fact, a slightly modified family, where a *limited* level of monitoring is part of the arrangement and state agencies have a more active role both prior to birth and during the child’s upbringing than in many (though not all) societies where the family is the main child-rearing arrangement.

Compared to a family, this arrangement seems to involve less risk of objectionable dependency. Since the resources the child needs are provided by two separate parties, foster parents have no monopoly. Supervision by a third independent party reduces the risk of parental discretion being misused. Moreover, since the level of intrusion in the privacy of the foster home is limited, it should not prevent intimacy and natural adult-child interaction. In other words, the authority of parents and public authorities is differently balanced in this arrangement, to better protect children without sacrificing privacy and its associated goods altogether. There are also egalitarian reasons to support the foster care model: Should the family lack resources, the CWS can provide them, at a significantly lower threshold compared to the type of family outlined in this chapter, where there

are stronger restrictions on the access of public services. There is, in other words, improved potential for a more level playing field if we remodel the family in the way just outlined.

## Defending the family

At this point, it seems to me that we have built up a serious challenge to organising child-rearing in families. Improved protection of children by rearranging families in the way just outlined comes at a cost, however. To remodel families in the way suggested involves a radical change in the content of the right to privacy. As Schoeman writes, the right to privacy ‘... entitles the adults of the family to exclude others from scrutinizing obtrusions into family occurrences’ (1980, p. 10). Specifically, it diminishes protected privacy in at least three respects: access, information and parental discretionary control. Regarding access, the remodelling of the family removes conditions that limit public intrusion in family life, i.e. intrusion is only permissible if there is risk that the child’s parents are harming the child. Families may, of course, occasionally be subject to interventions from public services but, as Archard writes, to access or monitor the family and thus violate privacy, ‘... official agencies must have just cause to “snoop” rather than simply be exercising a general right to patrol the matter’ (Archard, 2010, p. 25). Regarding information about the family, the suggested modifications make monitoring of the family part of the general arrangement, as opposed to a means that may be permissible in special cases. In the arrangement outlined above, then, there is no right to exclude public agencies and public agencies have access to family life. Finally, diminished privacy of access and information affects both parents’ space to raise their child without interference and parental conduct. It affects, in other words, parental discretionary space and discretionary reasoning (cf. Molander, 2016, Ch. 2).

These are significant limitations to privacy. If we value privacy, we should reject the suggested remodelling of the family. This leads us to the philosophical problem of defending family privacy. Jeffrey Blustein has pointed out that the basis of our commitment to family privacy seems like ‘... something of a mystery’ (Blustein, 1982, p. 205). Recent contributions to family ethics address the question, however, and provide us with at least three argumentative strategies we might employ to defend family privacy:

1. We might adopt a *child-centric approach* and argue that the child has an interest in family privacy.
2. We might adopt a *dual-interest approach*, where we also appeal to the interests of the parent.
3. We might argue that the solution –reorganising the family to resemble foster care – is worse than protecting family privacy.

## A child-centric approach

Let me start with a version of a child-centric approach, with a basis in the work of Harry Brighouse and Adam Swift. While these two authors, in fact, defend a dual-interest approach and appeal to the interests of both children *and* parents, they also claim that when it comes to justifying child-rearing arrangements, children come first (Brighouse & Swift, 2014, p. 59). Their contribution includes a child-centric defence of the family, one that only appeals to the child's interests.

As already noted, Brighouse and Swift argue that a certain relationship is required to realise children's interests. Both children's developmental or future-oriented interests and their present interest in enjoying their childhood are best met, they argue, if children are raised in '... intimate but authoritative relationships between children and a small number of particular adults, relationships in which the adults have considerable discretion over the details of how the children are raised' (Brighouse & Swift, 2014, p. xii, pp. 64–74). To rephrase, they think that children need to grow up in a family, as a small, private and protected arrangement.

Why is that? First, since at least small children are not capable of satisfying their own needs, adults must decide for them: The child needs a paternalistic relationship. Second, a close and intimate relationship, with an attentive and motivated caregiver, is required for the child's development and his/her enjoyment of childhood. That is, such a relationship matters to both future and present-oriented interests (Brighouse & Swift, 2014, p. 72). Third, the child's interests are interconnected; an arrangement that meets the child's emotional needs will also stimulate the child's cognitive development and his/her enjoyment of childhood, and so on. Accordingly, satisfaction of the child's interests and disciplining the child requires a coordinated, consistent effort. Fourth, it is essential that the intimate and authoritative aspects are combined: for example, disciplining a child will often also involve comforting the child, and it is important that the child knows

he/she is valuable to the caregiver when he/she is disciplined (Brighouse & Swift, pp. 73–75). For these reasons, parental authority should only reside with a few people, all of whom should have a close – familial – relationship to the child (Brighouse & Swift, p. 73). Finally, such a relationship should be protected from undue external interference: a monitored, supervised or manual-guided relationship will not develop into the close, intimate relationship of the kind a child needs. The child needs spontaneity, undivided attention and genuine emotional responses (Brighouse & Swift, p. 73).

This argument, if successful, establishes the importance of the family for children and leads Brighouse and Swift to reject alternative arrangements, such as child-rearing in institutions and communal care (Brighouse & Swift, 2014, pp. 70–75). While I shall assume that Brighouse and Swift correctly point out that the parent-child relationship is sufficiently important to deserve protection, it seems unconvincing to hold that the level of state intervention we are presently discussing would impair the relationship between parent and child (cf. Altman, 2018). While Brighouse and Swift reject constant monitoring, manual-based parenting, etc., such a level of intrusion or management of parents does not characterise the arrangement I propose. Insofar as the arrangement can facilitate relationships of the kind the child needs and improve protection, it seems difficult to reject from a child-centred viewpoint. The central point is that Brighouse and Swift's child-centric arguments support a familial relationship, but not the family. If the familial relationship is realisable in the arrangement I propose and my proposal is a better way to address the problems of inequality and the care monopoly, then the foster care model seems compatible with their child-centric view.

Regarding the promotion of valuable parent-child relationships, the foster care model might even be an improvement. First, the kind of attentive parenting Brighouse and Swift describe, while rewarding, is also exhausting, particularly for parents whose children require more intensive care or for parents with other demanding or important commitments. From this perspective, it is not difficult to recognise egalitarian reasons for endorsing the foster care model: a moderate level of support and monitoring of families might allow disadvantaged parents and/or children to spend more time with each other and make that time more stimulating and enjoyable. More generally, a parent-child relationship that can adequately satisfy the child's interests is not something that always develops automatically and, even when it exists, the relationship may face challenges. Many children

(and families) are likely to benefit from training, instruction and support. Moreover, the arrangement is likely to ease parents' access to support from public services.

A related concern is that some level of conflict or coordination problems between parents and public officials seems inevitable in the foster care model. Since the arrangement strengthens the role of public officials in children's upbringing, this can be expected. That being said, the arrangement does not radically transform parental responsibility or the parental role: there is no transferal of decision-making authority from parents to public services as in ordinary foster care, for example. In this respect, then, the level of conflict and coordination problems might not be very different from those that occasionally arise when a family interacts with public welfare services, although mandatory contact will most likely affect conflict frequency.

Critics of the arrangement will surely voice other concerns. Some might observe that many parents will regard the foster care model as threatening or coercive, and react with suspicion and/or unease. Such reactions could negatively affect both the parent-child relationship and cooperation with the CWS. Based on these assumptions, critics could argue that *the perceived threat of state coercion* could impair the familial relationship or undermine cooperation between parents and state agencies. Moreover, parents of disadvantaged children might have particularly strong reasons to distrust the arrangement, because the foster care model licences public officials to implement additional coercive measures if they think it necessary. Thus, the critic could argue that the foster care model makes some children, disadvantaged children in particular, worse off. Some will also point to the unfairness of subjecting all families to this level of intrusion when only a minority of children are at serious risk.

Regarding the first point, on the perceived threat of additional coercive measures, we might distinguish between two versions of this argument, respectively regarding the foster care model itself and its reception. The critical argument above seems to mainly concern the latter. Thus, one possible response is that this argument certainly is relevant to questions on how to implement the foster care model. But it is less obvious why some parents should be particularly sceptical to the foster care model *itself*. Sceptics could, however, target the model by questioning the discretionary powers of the CWS. They could argue that the foster care model allows individual agents to *arbitrarily* intervene in families beyond a minimum

level and thus undermine the level of privacy required to secure the familial relationship with its associated goods.

There are at least two ways to address this. The first is to clarify the conditions for when public services' support and monitoring can exceed the general minimum requirements of the foster care model. At this point, I merely assume that reasonably clear conditions can be established, although I discuss a related issue below, in the section on reasonable pluralism. The second way to address the problem, anticipated in the outline of the foster care model, is to ensure that the arrangement is supervised by an independent agency.

Regarding the unfairness of subjecting all families to the level of intrusion of the foster care model, one response is that mandatory measures of this scope are required to ensure that those children who are most in need of such measures, receive them (cf. Gheaus, 2011, p. 509). Also, there are other mandatory arrangements that to some degree restrict family privacy and parental discretion that we do not regard as objectionable. Mandatory education, for example, is not only about learning but involves a level of monitoring of children and parental practices, as well as the requirement that teachers notify the CWS if they believe there are serious deficiencies in how the child is being cared for (cf. The Norwegian Education Act, 1998, Section 15 (3). See also Gheaus, 2011, p. 498). The critic must explain why coercive arrangements of this kind might be permissible while arrangements that target the family in other ways are not. Again, I will return to this issue in the last section.

## Parental interests

Although a couple of issues were left open in the previous section, we can still conclude that none of the arguments above establish that the foster care model is an arrangement that would undermine the parent-child relationship. Insofar as children have an interest in the familial relationship, they have little reason to reject the foster care model. However, children are clearly not the only party affected by the arrangement I propose. We should also consider the interests of parents. As noted, Brighouse and Swift do in fact defend a dual-interest approach where parental interests matter, particularly when addressing why someone might have a right to engage in parenting (Brighouse & Swift, 2014, p. 95). In their view, however, the content of parental rights and privileges is based on the child's interests

(Brighouse & Swift, 2014, p. 74). But if the foster care model is in children's interests and these interests are the basis for parental rights, the foster care model seems compatible with at least those parental interests that are sufficiently important to ground rights.

Thus, I draw on another approach, developed by Norvin Richards. In *The Ethics of Parenthood* (2010), Richards bases parental rights on the following principle: '... we have the right to act as we choose if our actions are suitably innocent with regards to others' (Richards, 2010, p. 22). Phrased differently, others have no right to interfere with our 'projects' – such as starting a family – unless our projects harm others. The implication of Richards' view is that interfering in the family is wrong, unless this individual project imposes harm on others, for example the child. This raises the question of when state intervention in the family is permissible. Richards restricts permissible interference by state or public agencies to cases of neglect or abuse (Richards, 2010, Ch. 4). This does not mean that Richards thinks parental obligations amount to avoiding neglect or abuse: on the contrary, his view is that parents should promote good lives for their children. The condition for *state interference* in the family is abuse and neglect, however.

Richards' theory leads to the conclusion that it is impermissible to reorganise the family in the way suggested unless the parent, in fact, agrees to it. In particular, the level of public intervention in the foster care model is disallowed according to his theory: In the foster care model, public interference in the family project is permitted even when there is no evidence of neglect and abuse. Family support and supervision, for example, are preventive measures, intended to both help the family flourish and to forestall the possibility of future harm. This level of interference in the 'parental project' is disallowed by Richards' theory. He would deny the state any role in shaping the family.

Richards provides us with another explanation of why family privacy should be protected. Further considerations could also be added in support of his theory. It permits a wide variety of ways to raise children, which might benefit both children and parents, since it gives children and parents ample space to satisfy individual needs and preferences. Moreover, society may also be enriched by the variation in children this arrangement is likely to produce. Richards can therefore appeal to the interests of parents, children and society as support for his claim regarding the importance of liberty.



It is tempting to ask how important this liberty is for children who do not benefit from having resourceful, attentive and caring parents. On the one hand, such a strong restriction on state intervention makes the state largely unable to do much about objectionable inequalities. On the other hand, some of the less fortunate children may have reason to object to the level of protection they are granted. It is hardly desirable to suffer neglect or abuse before the state intervenes. These children, and children in general, have an interest in preventive measures – regulations that can forestall harm.

Moreover, Richards' description of the family as a 'project' misconstrues the nature of parents' liberty to raise their children. As Gheaus has argued, because children have full moral status, one cannot claim legitimate authority over them by appealing to one's own interests (e.g. Gheaus, 2017). While people may prefer to have their parental projects protected, the fact that it is *theirs* cannot justify a right to non-intervention. A plausible justification of the right to non-intervention must also be based on the child's interests, but if the claims made in this chapter are correct, this level of parental liberty is not in children's interests. More generally, if children's interests limit parental rights, as Brighthouse and Swift, and Gheaus claim, then it is hard to see how appealing to parental interests could provide us with an argument that rules out the foster care model.

## Reasonable pluralism

This leads me to the third strategy for defending family privacy. The strategy involves rejecting public care as a possible solution, because state intervention in the inner workings of the family is incompatible with reasonable pluralism. To make this point, I draw on insights from John Rawls. As we recall, Rawls recognised some of the problems of the family, but he dismissed the idea of abolishing the family. I suspect he would also have been sceptical to the limited state interference in the inner workings of the family proposed in this chapter (see e.g. Rawls, 1999b, pp. 595–601). Very briefly, a Rawlsian case against interfering in the inner workings of the family might be outlined in this way:

1. Raising children involves drawing on substantive values and beliefs about what is good for the child, for example, experiences from our own childhood, psychological theories or religious views. In Rawlsian terminology, we draw on 'doctrines' of what is good for the child.

2. There is a plurality of such doctrines, and many of these are reasonable. But people's beliefs and values, while reasonable, are not always compatible. With Rawls, we might call this 'the fact of reasonable pluralism' (Rawls, 2005).
3. A tolerant society permits reasonable pluralism. Insofar as parents do not seriously wrong their children, it should be permissible to raise children in different ways and based on different values and beliefs.<sup>3</sup>
4. If raising a child involves employing substantive conceptions of what is good for the child, then state agencies involved in child-rearing will also employ such conceptions.
5. This implies that universal and mandatory forms of intervention in the inner workings of the family will necessarily conflict with alternative reasonable doctrines of what is good for the child.
6. Therefore, such an arrangement is intolerant.
7. Therefore, we should reject such an arrangement.

In other words, we do not want to give public agencies the power to define and enact a particular comprehensive conception of what is good for children. To this, one might reply with Rawls, that public officials can only properly exercise power '... when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse in light of principles and ideals acceptable to their common human reason' (Rawls, 2005, p. 137). Thus, one might argue that insofar as public officials exercise their powers within these constraints, the argument above loses most of its force. However, Rawls points out that these principles do not inform us how to raise children (Rawls, 1999b, p. 598), which raises the question of how public officials could reconcile these constraints with the type of involvement in the family they are charged with. One answer, perhaps, is that parental consent must be obtained for intervention beyond the minimum level. Still, there is a distinct possibility that confusion about which interventions are justifiable as 'promoting the (impartial) good' and those that require consent can lead to mistakes. Moreover, since human beings are fallible, it is unlikely that

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3 This premise is somewhat controversial. It rests on the assumption that it is permissible for parents to raise their children according to their own convictions, what Matthew Clayton refers to as 'comprehensive enrolment' (Clayton, 2006, 2012). Here, I assume but do not defend Brighouse and Swift's view that parenting does not and should not resemble the impartiality we expect from public officials (Brighouse & Swift, 2014, p. 170), and that parents can raise their children in accordance with their own (reasonable) beliefs.

all public officials will always operate within constitutional constraints once they enter a family, even when they actively attempt to do so. Such considerations should also reduce faith in supervision as an effective way to deal with this problem. In sum, the foster care model seems at best able to provide arbitrary protection for many reasonable forms of child-rearing.

Another concern, formulated by Norvin Richards among others, is that giving state agencies the power to instruct parents how to raise their children is a slippery slope. There is no clear limit on what state officials might do under the justification of ‘promoting the good’, and once the first barrier into family privacy is traversed, it is increasingly difficult to resist further invasive steps. Thus, as Norvin Richards points out, a parent’s power to form the child’s life is ‘... not a power we should want to centralize, if we believe individuality is important’ (Richards, 2010, p. 13). He notes, for example, that it seems inevitable that the state will make forays of its own into ‘value inculcation in children’ (Richards, 2010, p. 13).

The conclusion based on the observations made in this chapter, then, is that the best way to balance reasonable pluralism and tolerance with the protection of children is to permit child-rearing in a family arrangement where state agencies can only intervene under some suitably restrictive conditions, or where family life is more independent, or private, than in the foster care model (see also Munoz-Dardé, 1999, pp. 48–49). This does not mean that the existing division of rights and responsibilities between parents and the state should not be adjusted. Insofar as the child-rearing arrangement in our society is compatible with pluralism and the realisation of relationship goods, there is little reason to reject proposals that increase the state’s role in children’s upbringing. For example, the arguments in this chapter do not rule out Gheaus’ proposal of mandatory enrolment in day-care centres and school (2018a). Rather, they provide additional justification for her proposal. Unlike the foster care model, Gheaus’ proposal is permissible: it provides children with the protection of other caregivers without creating an objectionable interference in the inner workings of the family. The interference in parental discretion she suggests is compatible with the claims advanced in this chapter.

In a similar vein, the chapter provides egalitarians with some reasons to focus on other ways to address inequality than to radically rearrange the family. First, it provides egalitarian reasons to protect family privacy. That is, it echoes Brighouse and Swift’s view that familial relationship goods should be regarded as part of a theory of justice. Second, I have claimed that

family privacy is a component of a pluralistic society. Protecting privacy, at a certain level, is therefore an important means to provide children (and citizens in general) with opportunities to form their own conception of a good life. To these, we can add considerations that, despite their different content, direct egalitarians' focus elsewhere. Gheaus, for example, suggests that abolishing the family fails to remove the problem of inequality because children would still be exposed to different forms and levels of care by caregivers with different abilities and levels of commitment (Gheaus, 2018b).<sup>4</sup> Some level of inequality will, no doubt, persist as long as we have families, and not only should we be ready to accept this (see also Fishkin, 2014), but we should accept that it is difficult to imagine any form of child-rearing that could fully realise equality of opportunity. Finally, insofar as Macleod correctly claims that there need be little conflict between family values and equality of opportunity in a suitably non-hierarchical society (Macleod, 2018), there is hope that progress can be made without sacrificing family privacy.

## Conclusion

In the end, what we seem to be left with is to accept that the family is far from an ideal arrangement. As a defence of the family, this is an example of what Archard calls a 'Churchillian defence' (Archard, 2010). The family is, on balance, probably better than the alternatives.

One possible lesson from the previous discussion is the following: it might be difficult to justify family privacy and parental discretion if we exclusively appeal to the child's interests. Even a dual-interest approach, appealing to the interests of parents and children, seems insufficient. Due to the nature of the problems with the family, such approaches should be supplied with broad principles concerning how to organise the basic institutions of society. I have, very briefly, outlined one possible Rawlsian response. If we accept this argument, then general and non-voluntary public intrusions in the family of the kind discussed here are impermissible. This, it seems to me, helps clarify both where the demarcation line is between public and private responsibilities and prerogatives in child-rearing, and

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4 This does not preclude the possibility that egalitarians could (and should) be concerned with other aspects of how we organise families, such as inheritance, or how child-rearing responsibilities are divided between parents and the state. On this point, see e.g. Brighouse & Swift, 2014; Engster, 2010; Munoz-Dardé, 1999.

provides an explanation for it. Importantly, the arguments above also suggest that toleration should remain an important concern and limitation for the CWS, even in cases where they can justifiably intervene. It seems to me that when promoting a child's interests, the restrictions on agents of public services remain: they should not be permitted to enact a particular comprehensive conception of what is good for the child. A possible implication of this chapter is that promotion of the child's best interests must be compatible with the principle of toleration just outlined. Thus, this implication possibly illustrates one way in which this chapter overlaps with other chapters in this book where the authors refer to balancing requirements in the European Human Rights Convention (see Netland, Chapter 9, and Fauske, Bennin & Buer, Chapter 1). This chapter provides some ideas of what kinds of considerations such balancing might entail.

## Author biography

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## References

- Altman, S. (2018). Parental control rights. In E. Brake & L. Ferguson (Eds.), *The philosophical foundations of children's and family law* (pp. 209–226). Oxford University Press.
- Archard, D. (2010). *The family: A liberal defence*. Palgrave Macmillan.
- Blustein, J. (1982). *Parents and children. The ethics of the family*. Oxford University Press.
- Brighouse, H., & Swift, A. (2006). Parents' rights and the value of the family. *Ethics*, 117(1), 80–10.
- Brighouse, H., & Swift, A. (2014). *Family values. The ethics of parent-child relationships*. Princeton University Press.
- Clayton, M. (2006). *Justice and legitimacy in upbringing*. Oxford University Press.
- Clayton, M. (2012). Debate: The case against the comprehensive enrolment of children. *Journal of Political Philosophy*, 20, 353–364. <https://doi.org/10.1111/j.14679760.2011.00397.x>
- Engster, S. (2010). The place of parenting within a liberal theory of justice: The private parenting model, parental licenses, or public parenting support? *Social Theory and Practice*, 36(2), 233–262.
- Fishkin, J. (2014). *Bottlenecks*. Oxford University Press.
- Gheaus, A. (2011). Arguments for nonparental care for children. *Social Theory and Practice*, 37(3), 483–509.
- Gheaus, A. (2012). Is the family uniquely valuable? *Ethics and Social Welfare*, 6(2), 120–131. <https://doi.org/10.1080/17496535.2012.682499>

- Gheaus, A. (2017). Sufficierian parenting must be child-centered. *Law, Ethics and Philosophy*, 5, 189–197. <https://doi.org/10.31009/LEAP.2017.V5.16>
- Gheaus, A. (2018a). Children's vulnerability and legitimate authority over children. *Journal of Applied Philosophy*, 35(S1), 60–75. <https://doi.org/10.1111/japp.12262>
- Gheaus, A. (2018b). What abolishing the family would not do. *Critical Review of International Social and Political Philosophy*, 21(3), 284–300. <https://doi.org/10.1080/13698230.2017.1398449>
- Goodin, R. E. (1985). *Protecting the vulnerable. A reanalysis of our social responsibilities*. University of Chicago Press.
- Macleod, C. M. (2018). Equality and family values: Conflict or harmony? *Critical Review of International Social and Political Philosophy*, 21(3), 301–313. <https://doi.org/10.1080/13698230.2017.1398476>
- Ministry of Children and Equality. (2003). Foster home regulations [Fosterhjemforskriften]. Retrieved 12 October 2023 from <https://lovdata.no/forskrift/2003-12-18-1659>
- Molander, A. (2016). *Discretion in the welfare state. Social rights and professional judgment*. Routledge.
- Munoz-Dardé, V. (1999). Is the family to be abolished then? *Proceedings of the Aristotelian Society*, 99, pp. 37–56.
- The Norwegian Child Welfare Act [Lov om barneverntjenester]. (1992). Lovdata. Retrieved 12 October 2023 from <https://lovdata.no/lov/1992-07-17-100>
- The Norwegian Child Welfare Act [Lov om barnevern]. (2021). Lovdata. Retrieved 12 October 2023 from <https://lovdata.no/lov/2021-06-18-97>
- The Norwegian Education Act [Lov om grunnskolen og den vidaregåande opplæringa]. (1998). Lovdata. Retrieved 12 October 2023 from <https://lovdata.no/lov/1998-07-17-61>
- Rawls, J. (1999a). *A theory of justice* (revised ed.). Harvard University Press.
- Rawls, J. (1999b). The idea of public reason revisited. In S. Freeman (Ed.), *John Rawls: Collected Papers*. Harvard University Press.
- Rawls, J. (2005). *Political liberalism* (expanded ed.). Columbia University Press.
- Richards, N. (2010). *The ethics of parenthood*. Oxford University Press.
- Schoeman, F. (1980). Rights of children, rights of parents, and the moral basis of the family. *Ethics*, 91(1), 6–19.
- Vallentyne, P., & Lipson, M. (1989). Equal opportunity and the family. *Public Affairs Quarterly*, 3(4), 27–45.