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**Should All Families
be Treated Equally by Law?
In Support of Equal Dignity
and Legal Recognition for
Unconventional Families**

Abstract

In this paper, I advocate the equal legal recognition of unconventional families on a liberal basis. For this purpose, I outline a functional definition of family as a multipurpose association (Struening 1999), I enumerate some of the most common and relevant purposes of family relationships, and I suggest that the function of care justifies a legitimate intervention of a liberal state in recognizing family relationships. Then I go on to argue that, if a liberal state recognizes family relationships through the law, a fundamental condition must be satisfied in order for its intervention to be legitimate. Namely, it must not violate the principle of equality between families. Consequently, it should provide equal legal treatment to family units sharing the same relevant functions and purposes, whatever their form is, and even to the ones that radically differ from the widespread idea of the traditional family.

Keywords: unconventional families, marriage, legal recognition of family, relationships of care

1. Introduction

Family and its legal recognition, especially in the form of traditional marriage, prompts many controversial political and normative issues. Can and should liberal states recognize family relationships, and which kind of family forms? Is there any legitimation for liberal legislators to recognize and even promote one particular family structure among oth-

ers? Is marriage the most desirable legal tool to recognize family units and secure rights and duties to family members? Should we keep speaking of 'family' at all? These are only some of the key questions revolving around the legal and social institutions of family and marriage, which nowadays are undergoing an even deeper sociological, political, legal, and normative scrutiny than what happened in the past.

From a sociological perspective, the so-call traditional family – namely the nuclear, heterosexual, monogamic family structured by gender – is still going through the disruptive process of transformation that started in the second half of the 20th century in Western liberal democratic states, due to shifts in cultural, technological, economic, social and political conditions (Cogswell 1975; Budgeon and Roseneil 2004; Cutas 2019). A formal and substantial improvement of gender equality in family relationships,¹ increasing rates of divorce, stepfamilies, voluntary singlehood, births out of the wedlock, and nonmarital cohabitations are only some of the most visible changes in family configurations and dynamics. New (Palazzo 2018), or variant (Cogswell 1975), family forms are becoming more and more widespread. They are enduring a process of normalization, especially in their less unconventional varieties: although stepfamilies, cohabitations, and couples 'living apart together' diverge from the archetype of the traditional family, they are no longer regarded as radically deviating from a socially acceptable idea of family.

The increasing visibility and social approval of more ordinary forms of new families blazed the trail to a new academic and political interest in more unconventional family types, especially same-sex families. In turn, more widespread social acceptance of same-sex families paved

¹ When I talk about formal improvement of gender equality, I refer to the abolition of legal provisions legitimating formal inequality between wife and husband within marriage (e.g., the legal doctrine of coverture in common law, according to which a wife's legal rights and obligations were subsumed by those of her husband). Substantial improvement of gender equality refers instead to the achievement of better economic and social conditions of women within marriage, such as a more balanced sharing of productive/reproductive labour between wives and husbands. While in Western democratic countries formal equality has been achieved, some substantial inequalities between men and women within family persist (Okin 1989).

the way to increasing visibility of even more radical kinds of unconventional families, or what I regard as experimental families (Cogswell 1975): polyamorous families (Aviram and Leachman 2015; Sheff 2011; Solomon 2021) and what I refer to as ‘networks of care’, namely, queer assemblies, neo-tribes, urban tribes, and quasi-communes (Heath 2004; Brake 2014; Palazzo 2021). These new radically unconventional family forms hold the potential to challenge norms in intimate relationships in such a disruptive way that shall probably lead us to rethink our common notion of family. For this reason, and because they are not yet as visible and intelligible as more conventional types of new families are (Sheff 2011), we face a higher degree of suspicion and resistance when it comes to their social acceptance, let alone the possibility of their legal recognition.

As a matter of fact, if we look at the number and complexity of the existing family forms, it is clear that ‘family’ is not an immutable entity but family units “reshape themselves in response to shifting social conditions” (Sheff 2011, 491). Therefore, it might seem unrealistic to speak of ‘family’ at all, to the point that someone suggests replacing the term ‘family’ with ‘families’ (Budgeon and Roseneil 2004; Cutas 2019; Gittins 1985). From my perspective, referring to ‘families’ is probably a more appropriate way to give an account of the increasing facets of family forms, which widely differ from one to another in some crucial respects. I also recognize that we should stop naming ‘the family’, in other words, we should refrain from the use of the definite article as if family were a single, unambiguous phenomenon.²

Accordingly, when I utilize the term ‘family’, I have in mind all the possible different family units sharing the same functions, regardless of their formal features. I speak interchangeably of ‘family’ and ‘families’, attributing to both those terms the same (functional) meaning that shall be developed later, and I discard the definite article. From this premise

² According to Archard (2018), is it possible, though, to speak of “the family” (as a peculiar social unit), but at the same time recognizing that this peculiar kind of social unit can assume many different forms. However, I agree with Douglas (2001), cited in Archard (2018), suggesting that when we speak of “the family” we are implicitly presuming that one kind of family has to be preferred, and namely “the” traditional family.

descends the key role of the language and conceptualization in dealing with new challenges in the field of family. No political, normative, or legal discourse on family relationships should neglect the importance of outlining an appropriate and inclusive definition of family. For this reason, I shall set out to show why it is still necessary to speak of ‘family’, and I shall subsequently outline a functional definition of family as a multipurpose association (Archard 2018; Cutas 2019; Struening 1999). This is the basis for the development of my claim in favour of the equal recognition of unconventional families.

The radical evolution of family toward a number of new ways of building and living intimate relationships raised many political, legal, and normative issues, including new claims for legal recognition,³ and the satisfaction of crucial needs for legal protection of family units that are not yet recognized. Consequently, Western liberal democratic states have been called to answer to demands for legal recognition of different types of family units, and the existing forms of legal recognition of family, especially marriage, have started to be questioned. On the one hand, some kinds of nonmarital relationships and cases of nonbiological parenthood eventually gained forms of recognition. Especially conventional kinds of nonmarital unions, such as dyadic heterosexual cohabitations, have widely been recognized both by progressist and conservative

³ Throughout this work, when I mention the ‘recognition’ of family, I refer to legal, and not social, recognition. I suggest that a state can intervene in family relationships, by disciplining them through the use of the law, at least in two different ways. On the one hand, a state may outline forms of ‘formal’ legal recognition of family, namely, conferring legal status to a specific kind of family relationship and attaching rights and obligations to that status. Marriage and civil union are both kinds of formal legal recognition of families. Formal recognition is the most powerful form of validation of family relationships, especially when it is established in the form of marriage. On the other hand, a state can provide forms of ‘functional’ legal recognition of family relationships (Palazzo 2018), by granting some limited legal consequences to relationships not having a legal status, but which are functionally equivalent to ones that are formally recognized. The conferral of a bundle of rights and obligations to a cohabiting couple, in so far it functionally resembles a married couple, is a form of functional recognition.

states.⁴ This has not always happened when it came to demands for the legal recognition of unconventional families, such as same-sex ones. More conservative countries still refuse to recognize any kind of unconventional family, diverging from 'the' traditional family. Their arguments are usually based on a normative defence of the nuclear heterosexual monogamic family as the only 'real' or 'natural' family, for reasons that will be investigated below (Elshtain 1991; Finniss 2008). However, most Western countries showed a more progressist attitude, and have started to recognize same-sex families, both by providing specific legal tools (e.g., civil unions or domestic partnerships) or by extending marriage's eligibility requirements. The normative justification for legal recognition of unconventional families usually appeals to liberal principles such as liberty, neutrality, and equality (Brake 2010; Den Otter 2015; Nussbaum 2009; Wedgwood 1999).

It is this work's purpose to advocate the equal legal recognition of unconventional families on the basis of political liberalism. I shall argue that unconventional families, even ones that radically differ from the widespread idea of the traditional family – such as polyamorous relationships and networks of care – deserve to be equally recognized by law. Furthermore, I shall claim that the intervention of a liberal state in disciplining families is legitimate only so far as it does not discriminate against different types of families. In other words, I aim at arguing that, if a liberal state recognizes family relationships through the law, a fundamental condition must be satisfied in order for its intervention to be legitimate. Namely, it must not violate the principle of equality between families, and consequently, it should provide equal legal treatment to family units sharing the same relevant functions and purposes, whatever their form is (Den Otter 2015; Nussbaum 2009).

For the sake of my argument, I shall outline a functional definition of family as a multipurpose association (Struening 1999), opposing both formal definitions (Archard 2018; Cutas 2019) and function-

⁴ One example is the functional recognition of the so-called *de facto* unions in Italy, sanctioned by the law 76/2016. According to this law, a *de facto* union is a dyadic cohabiting intimate durable and stable relationship, not yet sanctioned by marriage, whose members ask to be recognized in order to gain certain bundles of rights and duties, without acquiring any formal legal status.

al definitions of family as a one-purpose association (Archard 2018; Elshtain 1991; Finnis 2008). When providing this functional definition, I shall enumerate some of the most common and relevant purposes of family relationships, such as mutual support and cooperation, companionship, child-rearing, the satisfaction of intimate, romantic and sexual needs, and care. Although this intuition falls outside the main scope of this paper, and I shall not analyse it closely, I shall suggest that at least one of those purposes is so relevant to justify a legitimate intervention of a liberal state in recognizing family relationships, and this purpose is care.

This being said, I shall set out to show why, according to the definition of family as a multipurpose association, even radically unconventional types of family units should be considered families since they all share the same relevant functions and purposes. Furthermore, I shall clarify the meaning of ‘unconventional families’ and ‘experimental families’. Then, I shall go on to argue that the respect for equality between all the different kinds of families is a crucial requirement for the state’s intervention in the matter of family to be legitimate. In other words, a liberal state recognizing family relationships through law is acting legitimately only if providing equal treatment to all the different kinds of families, which are functionally analogous according to the definition of family as a multipurpose association.

2. *Defining family*

2.1 Why ‘family’? The social meaning of family

Due to the rise, spread, and increased visibility of many different family forms, we face enduring disagreements about the meaning of family, its nature and values. Facing the normative, descriptive, and linguistic complexity of the ever-transforming concept of family, one may ask whether it is still worth using the term “family” at all. I believe it is, for at least three crucial reasons: (i) family relationships are key for human life and society, and they are perceived as being uniquely valuable; (ii) differentiating between ‘families’ and other relevant, analogous social groups creates an unfair hierarchy between valuable relationships, and diminishes the value of less conventional kinds of intimate caring relationships; (iii)

due to the circumstance that existing laws refer to 'family', i.e. the branch of 'family law', it is probably more realistic to insist on changing the actual definition of family, making it more inclusive, than abolishing the legal and social category of family.

In the first place, even if family is clearly changing, and the traditional family and marriage are losing their grip on intimate lives, family relations – whatever their form is – seem still to be key for human life and society (Budgeon and Roseneil 2004). As a matter of fact, family is still perceived as a primary system for socialization and intimacy, and most people continue to live within families. Butler argues, in this regard, that we cannot assume that family is: “‘over’ or ‘dead’ just because [...] it has lost the capacity to be formalized and tracked” (2002, 15). Moreover, according to Budgeon and Roseneil: “the move by family sociologists to pluralize the concept, to speak of ‘families’ rather than ‘the family’, emphasizes the ‘still alive-ness’ of the category, and seeks to maintain attention on family practices” (2004, 127). Indeed, even from a conceptual and linguistic point of view, “family” is still: “a pervasive word in our culture, embracing a variety of social, cultural, economic and symbolic meanings” (Weeks *et al.* 2001, 9). Moreover, empirical research shows that family ties are often perceived as being at the top of the hierarchy of intimate relationships; that people usually express a greater sense of obligation and commitment towards relatives than towards best friends (Graham 2008); and that they regard their family as one of the most important elements of their lives.

It is significant, however, that nowadays we use the term 'family' to qualify experiences, structures, and relationships that no longer resemble the common idea of the traditional family. Consequently, I believe that we should leave apart any essentialist notion since the concept of family seems no more anchored to an essence, or to any specific form, nor to its presumed 'naturalness'. In fact, as I shall show in section three, I would define family only based on its set of functions, leaving aside any fixed, monolithic, formal conceptualisation. In other words, I agree that family is rather something we do: “with this ‘doing’ displaying characteristics which warrant the label ‘family’” (Palazzo 2021, 4). As a result, from a queer perspective, family is built through many different discursive practices; it is always being shaped by individuals; it can hardly be mapped in its formal features, since 'doing family' can assume a variety of different meanings, and families can fulfil several legitimate purposes in many legitimate forms.

Moreover, certain kinds of new families, and especially what I refer to as 'experimental families', are becoming more and more flexible, while the boundaries between traditional family relations and different kinds of intimate relationships, such as friendships, are blurring (Pahl and Spencer 2004). Consequently, we should problematize the concept of family in order to avoid the risk of regarding family as a static phenomenon and concept, but rather as an active process of building certain human interactions (Weeks et al. 2001). However, I argue that we need to keep talking about family as a human and social phenomenon that, despite radical changes, is still meaningful and hard to dismiss both in theory – e.g., adopting a different terminology – and in practice. To quote Palazzo:

[The term 'family'] continues to manifest itself as a central trope in Western culture and intellectual imaginaries. Its evocative character remains of the unobjectionable sort. When one uses the word 'family', such as when referring to a friend, one intends to signify the importance one attaches to the relationship. This is to say that the label of 'family' is a signal to third parties regarding the significance and salience of a given relationship (2021, 10).

On the other hand, one might suggest abolishing the concept of family at all, both in the social and legal realms. When it comes to the legal recognition of family relationships, for instance, Brake (2012; 2014) argues in favour of the inclusion of all the different kinds of 'relationships of care', and not 'families', as the object of legal regulation. Other authors instead advocate the co-existence of different terms. According to Archard (2018), although we should not neglect the relevance of intimate caring relationships between adults only, we should not regard them as 'families'. In his perspective, only child-rearing units should be labelled 'families'. Along the same line, one may argue that only those relationships featuring formal characteristics of the traditional family, i. e. heterosexuality and monogamy, should be named families, even though other kinds of valuable relationships should be granted analogous bundles of rights and duties. However, I reject those views, and I suggest that we should preserve, even linguistically, what is perceived as being uniquely valuable in family relationships. At the same time, we should make the category of 'family relationships' as much inclusive as possible of all the different kinds of groups and configurations performing the same aims and fulfilling the same functions of traditional families.

Consequently, I decided to speak of 'family' as a matter of political choice, to stress the fact that I am referring to something more than a group of individuals or a set of practices, for 'family' has a powerful symbolical meaning, shaping the intimate lives of most of the people. Even more crucially, using different words to refer to variant family forms would fail to pursue the aim of challenging the widespread and rooted idea that only the traditional monogamous heterosexual conjugal relationship is 'family'. Furthermore, to deny the label of 'family' to new, radical, non-normative family units is to diminish their social value and deny them dignity and equal legal recognition. In other words, to distinguish between 'family' and another valuable close or intimate or romantic, or caring relationship between adults, implicitly justifies a hierarchy that, in turn, may easily result in a different degree of legal protection. Conversely, to regard experimental units as 'families' is the first step towards social acceptance and, eventually, equal legal recognition. Extending the definition of family to those experimental intimate groups and, accordingly, granting them equal recognition, is also a way to rectify past injustices and discrimination.

Finally, existing legal provisions and even whole branches of the law, i.e. family law, refer to the linguistic concept of 'family'. However, being the law a normative, prescriptive heuristic, legal definitions of family are prone to support a conception of family which is different from a social, descriptive (neutral) definition of family (notwithstanding that what the law defines "family" should be intelligible as "family" to society at large). The legal notion of family has crucial effects on the different kinds of existing family forms since not all the social groups we epistemically refer to as 'families' are necessarily considered families by the law. Since abolishing any reference to the social and legal category of family seems unfeasible for me, I suggest that we should more realistically work on the definition of family, making them as inclusive as possible for legal purposes. Therefore, I suggest that in questioning the existing family laws we should start from the assumption that certain intimate, caring, committed relationships are families and, as such, they should be treated by the law. This is the reason why I believe it is key to speak of 'family' at all, but also the reason why I shall outline a much broader concept of family that may include many different valuable human relationships that are not yet regarded as a family by the law, as long as we stick to a normative, static and conservative definition.

2.2 Formal definitions of family

There are at least two different ways of providing a definition of family, namely a formal and a functional one. A formal definition of family refers to a shared number of social meanings (Archard, 2018). It has long been prevalent in the philosophical and sociological literature (Cutas 2019) and is still extensively used in legal provisions regulating families. As a matter of fact, the law mostly recognizes family relationships based on their formal features, such as consanguinity, cohabitation, number, and sex of partners, and I shall contest this legal approach. Accordingly, common formal definitions of family usually appeal to traits such as genetics, kinship, conjugality, and household (Archard 2010). “A family is the union of a man and a woman, committed to a romantic relationship, sharing the same roof”; “A family is a relationship between the two different-sex parents and their biological children”; “A family is a social group whose members share the same living place and are tied by genetic relationships” are the most common, traditional definitions of family grounded on formal features.

There are three main problems with a formal definition of family. Firstly, there is a lack of consensus on what epistemically counts as a crucial formal feature to connotate family. Consider the definition of family as a group of kin united by genetic bonds living in a shared habitation. This notion could be referring both to the so-called ‘extended’ family and to ‘multi-generational’ families or to the ‘nuclear marital’ family. However, ‘nuclear’ and ‘extended’ family are empirical different concepts. Nowadays, when we talk about family, we usually have in mind the latter rather than the former kinds. Therefore, ‘kinship’ is not always a suitable criterion for identifying what we mostly consider a family. Genetics is also a controversial feature. Social parenting has become more widespread for two main reasons: the great number of stepfamilies and stepparents – due, in turn, to the increased divorce rate – (Furstenberg 1987) and the development of new assisted reproduction technologies allowing for procreation through gametes’ donation (Golombok 2015). However, the lack of a genetic tie between parents and children does not prevent us from talking about family. Even ‘household’ is barely an essential feature of family, if we consider the high degree of geographical mobility and precariousness charac-

terizing modern lives. Should we not regard as a family a couple 'living apart together' (Levin 2004), namely two partners committed to each other, and perceiving themselves as partners, but not sharing a home? It is undeniable that this is an increasingly popular intimate choice, and it is difficult to justify their exclusion from the category of family (Roseneil 2006). As a result, I believe that one of the main criticisms of a formal account of family is that we cannot agree on which formal features allow us to uniquely define 'family' all and only those social groups that possess these features. Consequently, I contest the desirability of laws recognizing families based on controversial formal features such as heterosexuality, cohabitation or monogamy.

Secondly, a formal definition of family is prone to hide a normative evaluation of family. It is controversial what counts as a family on a formal basis due to the multiplication of family variants. Therefore, definitions that insist on alleged abiding features of family relationships are usually grounded on a (more or less implicit) presumption that certain kinds of family (made of those particular characteristics) are ideal, or more valuable than others. One may think about the assessment that "the family is a heterosexual monogamous married couple with biological children". What about same-sex couples, non-monogamous relationships, non-biological parents, or even childless couples? These are clearly diminished and excluded from 'the family' category. In other words, according to Cutas: "there is something compelling and inescapable about family when defined this [formal] way. Innovations in family-building [...] are, from this perspective, a threat to the privileged status of the family" (2019, 192).

Finally, a formal normative definition of family risks connotes 'the family' as a naturally occurring fixed phenomenon, instead of considering it a social-kind category. However, I reject any appeal to the 'natural' in defence of certain kinds of families instead of others. Accordingly, I argue that there are no 'natural' facts laying at the core of being members of a social category that we define as 'family'. Instead, formal (normative) definitions of family mostly rely on features that are regarded as 'natural'. I agree with Archard writing that: "it is all too easy to think that the family is natural in the way that being a mortal, warm-blooded, biped is a natural fact that holds true for human beings" (2010, xiv). Heterosexuality, monogamy, and genetics, alongside cohabitation, are the most

common grounds for formal definitions of family, and they are all understood as ‘natural’ circumstances. Many authors accounting for a formal definition of family stand in a conservative or religious perspective, such as the advocates of new natural law (Finnis 2008). They defend the traditional family as the ideal one based on the presumed ‘naturalness’ of its formal features. However, there are two main problems with this view.

On the one hand, inferring that something ‘unnatural’ is unquestionably wrong is a fallacy of reasoning, i.e., the naturalistic fallacy. According to it, normative assumptions cannot be derived from a statement of fact, such as, in our case: “heterosexuality and monogamy are natural”. On the other hand, even if we could logically infer that ‘natural’ means right, we need to acknowledge that there is nothing natural with formal family features such as heterosexuality, monogamy, and genetics. Monogamy, for instance, is predominantly a contingent social ideal, subject to social change, not a ‘natural’ way to raise families (Brunning 2020). Heterosexuality and genetics are meant to grounding the ‘natural’ family whose main purpose is reproduction through sexual intercourse. However, all the existing forms of social parenting contradict the circumstance that family and parenthood are of ‘natural’ – or only biological – kinds. As a matter of fact, social parenting occurs when there is a lack of genetic bonds between parents and children. Adoption, step-parenting, multi-parenting, same-sex parenting and generally parenting through assisted reproduction technologies, where at least one gamete is provided by a donator (including pregnancy for others), are examples of social parenting. The spread of different forms of social, rather than genetic ties between parents and children helps question the idea that family or parenting are ‘natural’ institutions, thus necessarily developing in the form of the traditional nuclear heterosexual family and biological heterosexual dyadic parenting.

In the light of these criticisms, I reject formal definitions of family and I agree with Archard arguing that: “the concept of ‘family’ need not have necessary and sufficient conditions” (Archard 2010, p. 30). At maximum, we might look to what Wittgenstein named “family resemblances” – the circumstance that families share some overlapping features – to connote family from a formal point of view (Archard, 2010; Wittgenstein, 1953). We might say, for instance, that kinships, genetics, cohabitation, conjugality, monogamy, and heterosexuality are

all able to represent common (but not necessary nor sufficient) family features. On the one hand, this (still formal) perspective would solve the problem of normativity, not prescribing any abiding feature of 'the real family', but only enumerating all the possible ways of being family. On the other hand, there would still endure a disagreement on paradigmatic formal grounds of family. This fact represents a key problem if we consider the resemblance account: "turns on an agreement as to what counts as sufficiently similar to what, further, can be agreed is a paradigmatic or baseline instance of family" (Archard 2018, 103). Therefore, I shall defend a functional definition of family.

2.3 Competing functional definitions of family: a one-purpose or a multipurpose association

A functional definition of family relies on what a family does, on its end and purposes, rather than on what a family formally is. This move from a formal to a functional definition helps to valorise the "quality of the relationships in the family rather than details of family composition such as the gender or sexual orientation" (Cutas 2019, 192). A functional definition of family empirically assesses whether families, whatever their form is, share some purposes and functions. In other words, a functional description of family need not be normative, namely, it need not presume any specific feature that makes for a better or worse kind of family. However, I argue that a particular type of functional definition of family is prone to be normative to the same extent as a formal one. There are, indeed, two possible competing kinds of functional definitions of family. On the one hand, we can functionally define family as a one-purpose association. On the other hand, we can outline a definition of family as a multipurpose association, serving not one but many different purposes (Struening 1999).

Authors supporting a functional definition of family as a one-purpose association usually argue that the key family function is child-rearing or custodial responsibility for children (Archard 2010; Elshtain 1991; Finnis 2008). According to Archard, for instance: "a family is a group of individuals whose adults take primary custodial roles in respect of its dependent children" (2018, 105). Elshtain argued, instead, that the purpose of the family (grounded on marriage) is procreation (1991). It is important to notice that a functional definition of family appealing to child-rearing

and custodial responsibility of children need not be inherently conservative as it might look at a first sight. As Archard claims, indeed, nothing in this definition “presumes, entails or requires a particular understanding of which adults discharge that role, how they discharge that role, their biological relatedness one to another, living arrangements, or indeed anything else that is normatively traditional or conformist” (2018, 105).⁵

However, authors such as Finnis (2008), Elshtain (1991) and advocates of conservative or religious arguments, stress the fact that not only child-rearing but rather “child-rearing by one’s genetic parents” – in other words, “natural” procreation through sexual intercourse – is the key function of family. Those positions incorporate within the category of “the family” only heterosexual couples with biological offspring. Appealing to “natural” procreation and “the natural” or “the real” family is undeniably a conservative position. Regardless of the particular emphasis on natural procreation or genetic child-rearing, it is precisely this kind of functional definition of family that usually ground traditional arguments supporting the exclusion of same-sex and other conventional families from legal recognition.

Furthermore, a one-purpose functional definition of family can be regarded as normative. For it prescribes a value judgment toward a specific family function (mostly child-rearing), whose relevance in connotating families is all but indisputable. As a matter of fact, not everyone agrees that child-rearing is the only purpose on which basis the notion of family can be defined. Developing the concept of family based on its child-rearing or procreative function means excluding from the category of family every kind of relationship between adults only, and this seems at least unreasonable. Consequently, I shall now defend a functional definition of family as a multipurpose association.

The functional definition of family as a multipurpose association was coined by Karen Struening (1999). According to this definition, people decide to create a family for several legitimate purposes, changing over

⁵ I agree that Archard’s position is far from being conservative. He claims indeed for recognition of every kind of parental relationship, whether heterosexual or biological or monogamous or not. Moreover, he also argues for the desirability of some form of recognition and protection of what he calls ‘intimate relations of mutual care and support’ between adults, even if, in his opinion, we cannot define them as ‘the family’ (2018).

time, and the child-rearing purpose does no more necessarily connote family. As a matter of fact, if we look back at the evolution of family in Western societies, we cannot but agree that the 19th century's idea of the nuclear family (made of parents and children), grounded on romantic ties, where individuals pursue personal fulfilment, has very few elements in common with, for instance, the Aristotelian idea of the household as an economic association. Moreover, since the 1960s, sexual and relational habits have dramatically changed. As already mentioned, unconventional relationships such as same-sex ones, which were stigmatized and even criminalised, have gradually become more socially acceptable. Same-sex relationships, in particular, have broadly been recognized by Western democratic countries, thus undermining one of the main pillars of the traditional family: heteronormativity (Warner 1991).⁶ At the same time, heterosexual families have turned into more gender-egalitarian models of relationships, moving from the traditional patriarchal family grounded on gender inequality (Okin 1989). More in general, nowadays "individuals see their intimate relationships more in terms of their own personal choices and less in terms of inherited traditions and structures. [...] As a result, today's families serve a greater range of purposes than ever before" (Struening 1999, 489).

According to the definition of family as a multipurpose association, family's aims may well include procreating and raising children, but also individual fulfilment, the satisfaction of intimate (romantic and sexual) needs, personal commitment, sharing of 'emotional economy' (Bottomley and Wong 2006), companionship, mutual support, moral and material cooperation, and care. Struening is not the only author supporting a functional definition of family as realizing different relevant purposes. Diduck and Kaganas' view of family seems to embrace an analogous meaning when they argue that: "in the liberal vision of the family, its social function is to provide a financially autonomous, physically and emotionally fulfilling enclave to its members" (2012, 14). They are echoed by Weeks *et al.*, writing that: "the use of the term 'family' suggests a strongly

⁶ Heteronormativity claims that heterosexuality is the norm in intimate relationships, thus establishing a hierarchy between heterosexual and non-heterosexual kinds of relationships (Warner 1991).

perceived need to appropriate the sort of values and comforts that the family unit is supposed to embody [...]: continuity over time, emotional and material support, ongoing commitment, and intense engagement” (Weeks *et al.* 2001, 10). To summarize, a functional definition as a multipurpose association treats ‘family’ as a kind of umbrella term for very different family’s configurations, sharing analogous functions. It also recalls the idea of ‘family resemblances’ (Archard 2010) cited above, if we agree that no specific function is necessary or sufficient to connote family, but there are many possible overlapping functions. All those personal relationships fulfilling one of the main purposes that we commonly ascribe to family, after a close empirical observation of family relationships, is “family”.

On the one hand, this kind of definition deals with the problem of normativity we faced both with formal and the functional definition of family as a one-purpose association. As a matter of fact, it accounts for all the possible different functions of family. As a result, this definition is not affected by a lack of consensus on family functions. On the other end, a multipurpose definition of family allows for a broader range of personal configurations to be considered family. It does not arbitrarily exclude any unconventional relationship from the social category of family, such as same-sex unions, and even radically unconventional ones, such as polyamorous relationships and networks of care. More intuitively, it does not prevent close relationships between adults to be defined as family, whereas from a one-purpose definition of family, one may question their being “family” due to the absence of children. In other words, I see why one might question the circumstance that radically unconventional kinds of family are families, and I shall address this point in section 3.3. However, it seems unreasonable to deny the status of family to a married couple without children, especially if we consider that: “people regard their spouses as family, even if they have no children and have no intention of having children” (Jeske 2018, 235). Consequently, family should be considered something broader than a child-rearing unit.

For all these reasons, I support a functional definition of family as a multipurpose association, according to which all different kinds of relationships sharing common purposes such as procreation, child-rearing, personal and emotional fulfilment, the satisfaction of intimacy needs,

personal commitment and care are families, whatever their formal features are. Developing a neutral, non-normative, functional definition of family shall ground my argument in support of the desirability of the legal recognition of unconventional families on an equal basis, within the framework of political liberalism.

3. Legal recognition of unconventional families in a liberal state: supporting equality

3.1 Political liberalism and the legal recognition of family

In order to develop my argument in favour of the equal dignity and fair legal recognition of unconventional families, I assume the perspective of political liberalism. Within this framework, I shall argue that *if* a liberal state decides to recognize any kind of family, then its action is desirable and legitimate only when recognizing all the different kinds of family forms. However, whether a liberal state can and should recognize family relationships through law is not straightforward from the perspective of political liberalism committed to the principle of neutrality (Brake 2012; Rawls 1993). Indeed, according to a liberal view, public policies explicitly aimed at interfering with individual rights and liberties should always be justified. Preliminarily, we should distinguish between coercive and non-coercive governmental interferences. The criminalisation of behaviours or preferences is a coercive measure. Conferring incentives in terms of status, symbolic reward or a bundle of rights and duties is a non-coercive promotion of certain choices or lifestyles among others. On the one hand, coercive measures are justified only based on the harm principle. Therefore, criminal laws sanctioning individual behaviours, such as sexual behaviours or personal choices in the matter of family life, are legitimate only in so far as those behaviours and family choices harm others. For instance, homosexuality was decriminalized only when it prevailed the view that individuals who find it morally offensive are not harmed by it (Brake 2018), while some kinds of family or sexual behaviour such as bigamy and incest are still sanctioned on the basis that they harm others (Calhoun 2005). On the other hand, governmental non-coercive interferences with personal choice in the matter of intimate and family life need a substantial justification as well, in order to be legitimate.

There are at least two possible grounds for the legitimation of a liberal state's non-coercive interference with individual rights and liberties: moral comprehensive reasons or public interests' fulfilment. However, for political liberalism, committed to the principle of state's neutrality between controversial conceptions of the good, a state enacting regulations and interfering with fundamental rights and liberties must not rely on moral, religious, metaphysical or other comprehensive doctrines (Rawls 1993). As a matter of fact, Western liberal societies are characterized by a pluralism of reasonable comprehensive doctrines of the good concerning all areas of life, and these doctrines often contrast one another. According to the principle of neutrality, states cannot enact regulations on the ground of controversial comprehensive conceptions which are not shared by all citizens. States' intervention in controversial areas of life ought in fact to be neutral or, in other words, grounded on some public justifications. Due to the multiplication of family forms and relational styles, there is a profound disagreement on the morality and the value of certain kinds of unconventional families. Conceptions of the good in the matter of family are particularly controversial, and for this reason, public policies and laws disciplining families are legitimate only if there is a corresponding legitimate public interest to protect (Brake 2012; Fineman 2006).

According to the definition of family as a multipurpose association, the social kind that we regard as "family" is a group of individuals fulfilling valuable and legitimate purposes that we commonly ascribe to the existing social realities of "families" through the empirical observation. However, this epistemic meaning of family does not directly imply any normative legal consequence; namely, it does not imply: (i) that family can or should be legitimately recognized by the law; (ii) that all the different family functions should be considered as equally relevant to make a family worth of legal recognition; (iii) that all types of families should be recognized by the law. Accordingly, this neutral definition of family does not tell us how and which existing family forms should be recognized. In other words, arguing that families are multipurpose associations, and enumerating their overlapping relevant functions, does not tell us anything about possible public interests grounding the legitimacy of policies recognizing family relationships. To justify the legitimacy of a liberal state's intervention in the matter of family, we should further investigate whether such a neutral definition of family as a multipurpose association may represent the basis for a normative evaluation of the legitimate role of the law in disciplining family.

A closer analysis of the legitimacy of a liberal state in recognizing family falls outside the purposes of this work. Here, it is sufficient to say that there may be different reasons why laws protecting the rights of family members are legitimate and desirable. My intuition is that a neutral definition of family as a multipurpose association may help us identify some relevant public interests grounding the legitimacy of family law. Arguing that family is, epistemically, a kind of relationship fulfilling certain legitimate and relevant purposes, does not mean that all different family functions should be the object of legal provisions. I suggest that there is at least one overlapping function of family relationships whose protection justifies the state's intervention in disciplining family, and this function is care.⁷ In other words, there are some key public interests in recognizing families because of their function of providing care.⁸ Assuming that one of the possible overlapping functions of family relationships is care, the legal recognition of family advances at least three key interests. (i) According to Brake (2012), caring relationships are primary goods. Consistently, I suggest that since all families are relationships potentially entailing the function of care, families themselves are primary goods. Therefore, states can legitimately distribute rights and benefits to individuals involved in family relationships. (ii) Care always entails vulnerability, and the protection of the vulnerable members of families encompasses a legitimate public interest in the legal recognition of family relationships. (iii) Families can be considered a subsidiary form of welfare (Gheaus 2012). In supplying material besides moral support, they relieve states from providing public welfare policies. Therefore, states have a strong interest in the existence of families.⁹

⁷ By supporting this thesis, I do not mean to deny that there may be other relevant public interests justifying legal provisions disciplining family. Justice, and the protection of the interests of the children in vertical relationships, are two possible relevant reasons for the legal recognition of family.

⁸ When I talk about 'care', I refer both to moral support and material cooperation (physical or economic caretaking) and to emotional caretaking, also intended as a 'caring attitude' toward another non-fungible individual (Brake 2012).

⁹ However, especially from a feminist perspective, it is controversial to argue that states should subsidize and promote family as a social institution providing care (Tronto 1993). Conversely, one might claim that it is the state itself that ought to perform duties of (public) care and welfare toward citizens,

I shall not analyse more closely those public interests in the legal recognition of family as a particular relationship of care. What I aim to show here is that there may be reasons why a liberal state can legitimately, or even should recognize family at all based on public interests and not on comprehensive doctrines of the good. To summarize: the definition of family as a multipurpose association is a useful heuristic to help identify the concept of family based on its functions. Among those functions, I suggest that care entails a public interest in the recognition of family. In principle, a state is not required to recognize and regulate any family at all, provided that it refrains from interferences with the freedom of family life. However, for the reasons I mentioned, I believe that a positive intervention in disciplining family is legitimate and sometimes desirable when it comes to the protection of care. In other words, from my account, a state is not only legitimated, but it should protect families because of their common function of care. I agree with Struening writing that “as a society, what we really want families to do is to encourage individuals to care for each other. Therefore, the state has an interest in encouraging all relationships that involve economic cooperation, care, and mutual support” (1999, 490). Consequently, the state’s intervention in the matter of family which is grounded on public interests linked to care is legitimate. And even if one might contest my argument in favour of the legitimacy of public intervention through family law based on care, or even arguments based on justice or the interest of the children, we should acknowledge that, whether legitimately or not, liberal democratic states do recognize family. Therefore, it is still compelling to assess which families should they recognize in order for their actions to be legitimate.

thus moving caregiving from the private realm of family to the public sphere. As a matter of fact, leaving all burdens of material and psychological support to some family members, mostly women, make them particularly vulnerable. I am very sympathetic with this view, but I suggest that we should acknowledge that, as long as care will be performed within families, there will be a public interest in recognizing families as the main private places where duties of care are performed.

3.2 Equal recognition of new families

If we accept my argument, and we consider that the public interests justifying the recognition and regulation of family are related to its function of care, we cannot but agree that family law of liberal democratic states should recognize all the different family forms, since they all potentially perform the key function of care, despite their formal features. Otherwise, the non-coercive public intervention in the family matter should not be considered legitimate, in so far it discriminates against functionally equal families. Furthermore, to be consistent with principles of neutrality and equal respect, it is not sufficient that family law recognizes or regulates all different families. It should also recognize or regulate them on an equal basis, namely, by the means of analogous legal institutions, conferring them the same rights and obligations, in order to grant them equal dignity. However, this is not to say that all existing families should actually realize caring purposes in order to be recognized as families. From my account, it is enough to say they all are potential relationships of care, without inquiring whether all existing families demanding recognition fulfil the purpose of care in concrete. Therefore, also dysfunctional families are families according to the multipurpose definition, and as such, they should be granted equal access to legal recognition. I support this argument for three main reasons. Firstly, when it comes to the legal recognition of traditional, heterosexual, monogamous families, we currently face no formal request to ascertain in concrete whether the partners are fertile, loving, truly monogamous, or caring. Secondly, scrutinizing actual family purposes is not feasible either. Thirdly, it seems at least paternalistic to assess what is truly 'caring', since care may assume many different forms.

I suggest that, when it comes to the legal recognition of family, rights and liberties concerning family life are subjected to three different levels of interference. Firstly, when a state sanctions only certain kinds of families through marriage or other legal means, the fear of facing stigma risks discouraging individuals from entering biased and unrecognized forms of family relationships. Therefore, their freedom to form a family and to choose their preferred form of family is indirectly impaired. Secondly, even if individuals override the fear of social stigma and form a type of unconventional family, they are prevented from their own decisions on

whom to marry. Furthermore, neglected families are illegitimately deprived of rights and duties, thus, they face a threat to the freedom of maintaining family relationships, alongside a lack of protection of vulnerability and dependence, which could also indirectly impair the freedom to exit. As a result, holding a monopoly on the regulation of family life, arbitrarily distinguishing between functionally analogous family units, a liberal state is illegitimately neglecting equal respect and illegitimately promoting certain kinds of family relationships over others. This public interference with one's freedom to choose the preferred partner or partners is not justified if we assume that all the different kinds of families fulfil analogous relevant purposes, despite their different forms.

Leaving aside for a moment the conceptualization of family as a multipurpose association, we should not forget that families often share also some common formal features. The archetypical family is usually thought of as based on common formal features such as heterosexuality, monogamy, romantic attachment, cohabitation, and potentially a child-rearing unit when parents and children are related by genetic bonds. Whereas non-archetypical families may be non-heterosexual, non-monogamic, non-conjugal, or even all those features together. Accordingly, I shall not neglect the circumstance that families may look very different in their formal features. Despite any normative definition of family, we might agree that, empirically, different formal features shape a variety of family forms. Even though those different family units are, from a functional perspective, equally capable of satisfying the needs of their members (Struening 1999), it may be useful to classify them from a formal perspective. As a matter of fact, we cannot forget that formal features of family still play a prescriptive pivotal role, in so far as most states still enact the legal tool of marriage to regulate family, and marriage is eligible only for nuclear heterosexual dyadic families, except where same-sex marriage has been recognized.

When I speak of 'variant' or 'new' family forms, I refer to all those families which are not grounded on legal marriage or biological ties, or which differ from the traditional nuclear family in some of their main features. All those families to a certain extent challenge the prescribed and state-promoted way of living family relationships. Both conventional nonmarital families and unconventional families are 'variant'. They can be regarded as 'new', not in an 'ontological sense' – if we consider that some of them have been visible for decades now – but: "new in the

sense that, epistemologically, we now have a growingly rich set of analytical tools to see them and especially to see them under a different light” (Palazzo 2021, 3). Then I make a further differentiation. I consider conventional nonmarital families the ones that are potentially eligible for marriage, since they do not lack any requirements, but partners voluntarily decide not to marry. Within this definition, we can include a family whose members are, in principle, entitled to marriage, but not demanding for their existing relationship to be legally sanctioned. Where only the heterosexual monogamous marriage is recognized, then a heterosexual cohabiting couple is a conventional nonmarital relationship. Where same-sex marriage has been established, a same-sex cohabiting couple may be considered a kind of nonmarital conventional relationship as well. Stepfamilies, cohabiting couples, single parents and their children, and couples living apart together (Levin 2004) fit into the category of conventional nonmarital families. I call them conventional since they resemble the nuclear traditional family in its three main pillars, and they are usually more widespread, visible, and socially accepted than unconventional families.

On the other hand, unconventional nonmarital families are not eligible for marriage, since they do not resemble the nuclear, heterosexual, monogamous, romantic family, from a formal perspective (Palazzo 2018). Unconventional families are always non-normative relationships since they do not comply with traditional family norms. They can be more or less radical or experimental, and they can include but are not limited to, same-sex couples, polyamorous relationships and networks of care – whether networks of friends, queer assemblies or so-called neo-tribes and friendship-based quasi-communes (Heath 2004), couples and groups of siblings and relatives and multi-generation families (Bengston 2001). Each of those different family forms lacks at least one alleged key feature of the traditional family: heterosexuality, monogamy, or conjugality. Same-sex and polyamorous families are conjugal, meaning that they usually involve a sexual or romantic attachment, but the former lacks the element of heterosexuality, and the latter is always a non-dyadic kind of relationship. Networks of care radically differ from the other two-family configurations for they are non-conjugal family relationships, where non-conjugal means lacking a romantic and sexual bond between partners. More in general, unconventional families “are ‘queer’ in the sense that they subvert the

pre-arranged and state-approved ‘proper way of living’ familyhood” (Palazzo 2018, 164). Indeed, what they all have in common is a great deconstructive power of family norms, for they radically challenge some of the main pillars of traditional family: heteronormativity (Warner 1991), mononormativity¹⁰ (Pieper and Bauer 2005) and amatonormativity¹¹ (Brake 2012).

According to the definition of family as a multipurpose association, any group of individuals potentially fulfilling relevant purposes that we empirically attribute to family relationships, such as mutual support, moral and material cooperation, and the satisfaction of sexual and romantic needs, are families despite their form. Consequently, all those different groups of individuals ought to be treated equally by the law. And I believe that nowadays, only a very conservative fringe of the population would deny the social, and possibly legal status of family to a same-sex couple, a single parent her child, a stepfather, his partner and their children born within previous marriages. However, I acknowledge that certain unconventional families are sometimes so radically different in their form from the common idea of the traditional family, and even so radically different from one to another, that it might seem unrealistic to talk about equality between families. This claim is especially true for specific types of unconventional families, or what I call ‘experimental families’, including, but not limited to, polyamorous families and networks of care.

3.3 Experimental families

We may wonder whether polyamorous families, which are non-monogamous and non-heterocentric (Goldfeder and Sheff 2013), have something in common with traditional monogamous heterosexual families.

¹⁰ Mononormativity is a term coined by Pieper and Bauer (2005) to refer to “the forms of power which help establish the monogamous couple bond as an idealized and normative model” (Gusmano and Motterle 2019, 352). In other words, monogamy is usually considered the norm in intimate relationships, and this is a powerful assumption as long as every relationship that deviates from this alleged norm is stigmatized and marginalized.

¹¹ Amatonormativity is a term coined by Brake (2012) which means that “a central, exclusive, amorous relationship is normal for humans, is a universally shared goal, and that such a relationship is normative, in that it should be aimed at in preference to other relationship type” (89).

Or we may wonder whether networks of care, such as groups of cohabiting friends or three siblings sharing a household, which are multi-partner and non-conjugal kinds of relationships (Brake 2014; Palazzo 2018), can be defined family as a same-sex couple is. Notwithstanding the circumstance that all different kinds of unconventional families have the power to challenge and subvert traditional norms, I believe that there are at least three main reasons why those experimental family forms appear even more non-normative than others, are less socially intelligible like families, and are treated with a greater amount of suspicion than other kinds of unconventional families such as same-sex ones.

Broadly speaking, all different kinds of unconventional families, including same-sex ones, challenge some crucial features of the traditional family. However, only radically unconventional families reject tout court the myth of the nuclear, romantic, cohabiting couple, thus retaining a certain degree of fluidity and a strong attitude towards experimental ways of living intimate lives. As a matter of fact, conjugality and monogamy are so deeply entrenched in our common understanding of family, that challenging them seems highly disruptive to the whole social organisation we are used to. By challenging those moral and sexual norms and hierarchies, polyamory and care networks appear particularly subversive and queer, at least in their most fluid and radical configurations. Such radically diverse kinds of relationships are regarded as a threat to social stability (Deacon and Williams 2004).

In the second instance, I believe that their non-dyadic nature is a key common reason why there is strong resistance to understanding them as families, and legally regulating them as families. On the one hand, the morality of non-dyadic relationships is regarded as controversial both from conservative and liberal perspectives. They both challenge conservative sexual norms and echo the spectrum of traditional polygamy, which is assumed to be inequalities and harmful. On the other hand, they hardly fit the legal scheme of marriage, whereas same-sex relationships do. Same-sex families, despite being unconventional kinds of families and potentially challenging heteronormativity,¹² have widely been recognized

¹² However, many radical queer activists and scholars, like Ettelbrick (1997) and Warner (1991) “have harshly criticized the personal cost of assimilation that same-sex couples bore in order to gain access to marriage” (Palazzo 2018, 168) and have cautioned against the risk of negating their subversive power.

through marriage. For same-sex unions to be recognized, the only change that legal systems had to make had to do with spouses' gender (Aviram and Leachman, 2015). Legally recognizing polyamory relationships and networks of care not only would require great adaptive efforts on the part of pre-existing legal and administrative public structures and procedures, but also a radical rethinking of our common idea of marriage and family.¹³ Consequently, not only their value and morality are often questioned, but sometimes they are not considered families at all.

Furthermore, experimental families are less visible, less widespread, and less socially accepted. In other words, those kinds of families are not only still unrecognized by the law. Their high degree of fluidity, non-normativity and experimentation make them, to some extent, unintelligible to the society at large. Consequently, members of these families result to be more exposed to negative judgements, stigma, discrimination and attempts toward normalization. They are often not perceived as families at all. And the lack of social intelligibility of those relationships as families prevents arguments in favour of legal recognition on an equal basis. To summarize, depending on the kind of definition of family we endorse, one might object that polyamorous relationships, networks of care and other different kinds of unconventional and especially experimental relationships are not families. If we assume a conservative formal definition according to which only heterosexual monogamous couples are families, then polyamorous relationships, networks of care and even same-sex couples are not families. Therefore, in my account, the definition of family as a multipurpose association serves two different purposes. Firstly, to determine the range of the possible empirical functions of families, as a basis for a normative evaluation of their relevance to the scope of the law. Secondly, to identify which types of relationships we should define family, based on their functions and not on their form.

¹³ Along the line of the debate on same-sex marriage, it is highly controversial whether other unconventional families, and especially polyamorous families and networks of care, *should* be regulated through marriage or different legal tools, even if they *might* somehow fit with traditional marriage model. See, for instance, Brake 2012; Calhoun 2005; Chambers 2013; Den Otter 2015; Metz 2007; Palazzo 2018.

As a result, according to the functional definition of family as a multipurpose association, I argue that all the different kinds of unconventional relationships, including experimental ones, are families since they all potentially fulfil the same purposes, including the purpose of care as a relevant object for the family law. Hence, despite their radically unconventional form, polyamorous relationships and networks of care are families. As a matter of fact, they both perform the same functions as more conventional kinds of family, despite their form. Let us imagine a couple of close friends caring for each other, materially and morally supporting one another, being emotionally intimate, and even cohabiting. Even though they lack sexual or romantic bonds, why should we deny that they are involved in a family relationship? Non-conjugal relationships are often primary caring relationships in people's lives, even though their importance is diminished by the privileging of romantic marital couples. The same applies to multi-partner relationships, whether networks of friends or polyamorous relationships, whose members take care of each other, with or without a romantic or sexual attitude. Individuals involved in experimental relationships, whether romantic or not, can and do experiment also intimacy, commitment, emotional closeness, and a caring attitude as much as individuals in more conventional kinds of relationships, such as monogamous relationships, do (Brake 2018; Emens 2004). Therefore, it seems unreasonable to rule these unconventional kinds of relationships out of the category of family at all.

In conclusion, turning from a conceptual definition of family to the political normative argument in favour of the recognition and regulation of family relationships, I cannot but claim that all families, more or less conventional in their form, ought to be treated equally by the law. They all are kinds of relationships fulfilling analogous relevant familial purposes, thus, they are families. Furthermore, they all are kinds of relationships potentially fulfilling the purpose of care, hence, their legal recognition is legitimate and desirable. From these premises, it is straightforward to conclude that, if states can legitimately and should decide to recognize family, they should treat equally all different kinds of family, whatever their form is. Otherwise, states fail to respect a fundamental principle of equal dignity between families, which are all functionally analogous. Unless cases of harmful relationships, I argue that there is no

public interest rationale in recognizing and regulating only certain kinds of relationships of care as families. This configures an illegitimate interference with freedom of intimate association and the right to family life.

Furthermore, I believe it is not either acceptable to circumscribe the object of family law to conventional and certain kinds of unconventional relationships, at the same time granting rights and duties to experimental relationships but without calling them “families”. Polyamorous relationships and networks of care are families, and as such they should be treated and also defined, otherwise we are neglecting their key functions and values. In other words: “if the reason for recognition [of family relationships] is the factor of caring, quite simply, why should it be presumed that there is only one carer?” (Bottomley and Wong 2006, 51). Or, I would add, why should it be presumed that care is necessarily linked to conjugality? To deny these kinds of unconventional families the status of family is unreasonable, and to deny them equal legal treatment is a form of unjust discrimination and an illegitimate violation of their equal dignity.

4. *Conclusion*

In this paper, I argued for the equal legal recognition of unconventional families, and for their equal dignity and respect, within the framework of political liberalism. However, much more can be said about the role of liberal states in recognizing family relationships. We may further investigate the relevant public interests in disciplining families; we may inquire whether public regulations are preferable to privatization of family relationships, and which kind of legal tools are the most suitable to protect and promote those interests without disproportionately restricting other fundamental rights and liberties. Furthermore, another, less straightforward kind of defence of equal legal recognition of families is possible. Namely, a perfectionist defence of the intrinsic value of all the types of unconventional families, different from the heterosexual monogamous conjugal one.

Consistently with the respect for neutrality between the controversial moral and religious conceptions of the good, a liberal government should not be interested in assessing whether unconventional relation-

ships are morally valuable or not. Indeed, it is straightforward that a liberal state should respect the individual freedom to live the kind of relationship they choose, based on the respect of competing conceptions of the good. Therefore, as I argued in this paper, if a state recognizes or regulates families based on public interests, it is not legitimate to interfere with the right to family life by recognizing certain kinds of families only. But arguing that all families fulfil relevant purposes also implies an appeal to “the human goods the practices realize” (Sandel 1989, 534). In other words, we are implicitly acknowledging that what is valuable in conventional kinds of relationships is also present in other, less conventional kinds of relationships. If all families share common valuable purposes, all the different types of families potentially accomplish the same valuable human goods. I am prone to agree with this second evaluation. In other words, I believe that unconventional families deserve the same quality of respect (Sandel 1989) as conventional kinds of family relationships: what is at stake are not only fundamental principles, rights and liberties, but also human dignity and flourishing.

References

- Archard D. (2010), *The Family. A Liberal Defence*, London, Palgrave Macmillan.
- (2018), “Family and Family Law: Concepts and Norms”, in E. Brake, L. Ferguson (eds), *Philosophical Foundations of Children's and Family Law*, Oxford, Oxford University Press, pp. 95-112.
- Aviram H., Leachman G. (2015), “The Future of Polyamorous Marriage: Lessons from the Marriage Equality Struggle”, *Harvard Journal of Law & Gender*, n. 38, pp. 269-336.
- Bengston V.L. (2001), “Beyond the Nuclear Family: The Increasing Importance of Multigenerational Bonds”, *Journal of Marriage and Family*, vol. 63, pp. 1-16.
- Bottomley A., Wong S. (2006), “Shared Households: A New Paradigm for Thinking about the Reform of Domestic Property Relations”, in A. Diduck, K. O'Donovan (eds), *Feminist Perspectives on Family Law*, New York, Routledge, pp. 39-58.
- Brake E. (2010), “Minimal Marriage: What Political Liberalism Implies for Marriage Law”, *Ethics*, vol. 120, n. 2, pp. 302-337.
- (2012), *Minimizing Marriage: Marriage, Morality and the Law*, Oxford, Oxford University Press.

- (2014), “Recognizing Care: The Case for Friendship and Polyamory”, Retrieved May 2020, *Syracuse Law and Civic Engagement Journal*, <https://slace.syr.edu/issue-1-2013-14-on-equality/recognizing-care-the-case-for-friendship-and-polyamory/>.
- (2018), “Paid and Unpaid Care: Marriage, Equality and Domestic Workers”, in E. Brake, L. Ferguson, *Philosophical Foundations of Children's and Family Law*, Oxford, Oxford University Press, pp. 113-137.
- Brunning L. (2020), *Does Monogamy Work?*, London, Thames & Hudson.
- Budgeon S., Roseneil S. (2004), “Editors’ Introduction: Beyond the Conventional Family”. *Current Sociology*, vol. 52, n. 2, pp. 127-134.
- Butler J. (2002), “Is Kinship Always Already Heterosexual?”, *Differences: A Journal of Feminist Cultural Studies*, vol. 13, n. 1, pp. 14-44.
- Calhoun C. (2005), “Who’s Afraid of Polygamous Marriage? Lessons for Same-Sex Marriage Advocacy from the History of Polygamy”, *San Diego Law Review*, vol. 42, n. 3, pp. 1023-1042.
- Chambers C. (2013), “The Marriage-Free State”, *Proceedings of the Aristotelian Society New Series*, vol. 113, pp. 123-143.
- Cogswell B. (1975), “Variant Family Forms and Life Styles: Rejection of the Traditional Nuclear Family”, *The Family Coordinator*, vol. 24, n. 4, pp. 391-406.
- Cutas D. (2019), “The Composition of the Family”, in A. Gheaus, G. Calder, J. De Wispelaere (eds), *The Routledge Handbook of the Philosophy of Childhood and Children*, London, Routledge, pp. 191-201.
- Deacon A., Williams F. (2004), “Introduction: Themed Section on Care, Values and the Future of Welfare”, *Social Policy and Society*, vol. 3, n. 4, pp. 385-390.
- Den Otter R.C. (2015), *In Defence of Plural Marriage*, New York, Cambridge University Press.
- Diduck A., Kaganas F. (2012), *Family Law, Gender and the State. Text, Cases and Materials*, Oxford, Hart Publishing.
- Elshtain J.B. (1991), “Accepting limits”, *Commonweal*, vol. 18, n. 20, pp. 685-686.
- Emens E.F. (2004), “Monogamy’s Law: Compulsory Monogamy and Polyamorous Existence”, *New York University Review of Law & Social Change*, vol. 29, pp. 277-376.
- Ettelbrick P. (1997), “Since When is Marriage a Path to Liberation?”, in A. Sullivan, J. Landau (eds), *Same-sex Marriage, Pro and Con. A Reader*, New York, Vintage Books, pp. 118-124.
- Fineman M.A. (2006), “The Meaning of Marriage”, in A. Bernstein (ed.), *Marriage Proposals: Questioning a Legal Status*, New York, NYU Press, pp. 29-69.
- Finnis J. (2008), “Marriage: A Basic and Exigent Good”, *The Monist*, vol. 91, n. 3/4, pp. 388-406.

- Furstenberg F. (1987), "The New Extended Family: The Experience of Parents and Children after Remarriage", in K. Pasley, I.T. Marilyn, *Remarriage and Stepparenting: Current Research and Theory*, New York, Guilford Press, pp. 42-61.
- Gheaus A. (2012), "Is the Family Uniquely Valuable?" *Ethics and Social Welfare*, vol. 6, n. 2, pp. 120-131.
- Gittins D. (1985), *The Family in Question*, London, Macmillan.
- Goldfeder M., Sheff E. (2013), "Children of Polyamorous Families: A First Empirical Look", *Journal of Law and Social Deviance*, vol. 5, pp. 150-243.
- Golombok S. (2015), *Modern Families: Parents and Children in New Family Forms*, Cambridge, Cambridge University Press.
- Graham A. (2008), "Flexibility, friendship, and family", *Personal Relationships*, vol. 15, pp. 1-16.
- Gusmano B., Motterle T. (2019), "The Micropolitics of Choice in Italy: How the Law Affects Lesbian and Bisexual Women's Daily Life", *Journal of Lesbian Studies*, vol. 23, n. 3, pp. 336-356.
- Heath S. (2004), "Peer-Shared Households, Quasi-Communes and Neo-Tribes", *Current Sociology*, vol. 52, n. 2, pp. 161-179.
- Jeske D. (2018), "Moral and Legal Obligations to Support 'Family'", in E. Brake, L. Ferguson, *Philosophical Foundations of Children's and Family Law*, Oxford, Oxford University Press, pp. 234-255.
- Levin I. (2004), "Living Apart Together: A New Family Form", *Current Sociology*, vol. 52, n. 2, pp. 223-240.
- Metz T. (2007), "The Liberal Case for Disestablishing Marriage", *Contemporary Political Theory*, vol. 6, pp. 196-217.
- Nussbaum M. (2009), "A Right to Marry? Same-sex Marriage and Constitutional Law", *Dissent*, <https://www.dissentmagazine.org/article/a-right-to-marry-same-sex-marriage-and-constitutional-law>.
- Okin S.M. (1989), *Justice, Gender, and the Family*, New York, Basic Books Inc.
- Pahl R., Spencer L. (2004), "Personal Communities: Not Simply Families of 'Fate' or 'Choice'", *Current Sociology*, vol. 52, n. 2, pp. 199-221.
- Palazzo N. (2018), "The Strange Pairing: Building Alliances Between Queer Activists and Conservative Groups to Recognize New Families", *Michigan Journal of Gender and Law*, vol. 25, n. 2, pp. 161-237.
- (2021), *Legal Recognition of Non-Conjugal Families: New Frontiers in Family Law in the US, Canada and Europe*, London, Bloomsbury Publishing PLC.
- Pieper M., Bauer R. (2005), "Polyamory und Mono-Normativität", in L. Mérit, T. Bührmann, S.N., *More than One Love: Polyamorous Relationships*, Berlin, Orlanda, pp. 59-69.

- Rawls J. (1993), *Political Liberalism*, New York, Columbia University Press.
- Roseneil S. (2006), "On Not Living with a Partner: Unpicking Coupledness and Cohabitation", *Sociological Research Online*, vol. 11, n. 3, <https://www.socresonline.org.uk/11/3/roseneil.html>.
- Sandel M.J. (1989), "Moral Argument and Liberal Toleration: Abortion and Homosexuality", *California Law Review*, vol. 77, n. 3, pp. 521-538.
- Sheff E. (2011), "Polyamorous Families, Same-Sex Marriage, and the Slippery Slope", *Journal of Contemporary Ethnography*, vol. 5, pp. 487-520.
- Solomon A. (2021), "How Polyamorists and Polygamists are Challenging Family Norms", *The New Yorker*, 15 March, <https://www.newyorker.com/magazine/2021/03/22/how-polyamorists-and-polygamists-are-challenging-family-norms>.
- Struening K. (1999), "Familial Purposes: An Argument Against the Promotion of Family Uniformity", *Policy Studies Journal*, vol. 27, n. 3, pp. 477-493.
- Tronto J. (1993), *Moral boundaries: A political argument for an ethic of care*, London, Routledge.
- Warner M. (1991), "Introduction: Fear of a Queer Planet", *Social Text*, vol. 29, pp. 3-17.
- Wedgwood R. (1999), "The Fundamental Argument for Same-Sex Marriage", *The Journal of Political Philosophy*, vol. 7 n. 3, pp. 225-242.
- Weeks J., Heaphy B., Donovan C. (2001), *Same Sex Intimacies: Families of Choice and Other Life Experiments*, London, Routledge.
- Wittgenstein L. (2009) [1953], *Philosophical Investigations*, Oxford, Wiley-Blackwell.