

## **OKIN'S *JUSTICE, GENDER, AND THE FAMILY***

### I. Introduction:

#### A. Important Concepts:

1. *Gender*: Okin means by 'gender' "the deeply entrenched institutionalization of sexual difference" (p. 6). She argues that gender is "largely socially produced" (p. 6). I take her to mean by this that the deeply entrenched institutionalization of sexual differences that we see in our society are not in any sense "natural" or inevitable given the biological nature of sexual differences. They are, rather, the result of contingent, historical circumstances.

#### B. The Central Theses:

1. *Moral Criticism of Contemporary Social Practices Concerning Gender*: Our society is systematically unjust with respect to the division of benefits and burdens between men and women.
2. *Criticism of Political Philosophy*: Issues of gender justice and justice within the family have been almost entirely ignored by traditional philosophers and political theorists.
3. Clearly there are various relations between these two theses. The systematic injustice presumably persists, in part, because it has been ignored by traditional political theories. Furthermore, the oversight by political theorists reflects the degree to which the prevailing (unjust) institutions have influenced the way we look at issues of gender and justice.
4. The situation described by these two central thesis is unacceptable for three reasons:
  - a) "Women must be fully included in any satisfactory theory of justice" (p. 14);
  - b) "[E]quality of opportunity, not only for women but for children of both sexes, is seriously undermined by the current gender injustices of our society" (p. 14); and,
  - c) "[T]he family—currently the linchpin of the gender structure—must be just if we are to have a just society" (p. 14).
5. Okin rejects the idea that the fundamental structures of traditional philosophy are "masculinist." Her criticism of traditional political theories is not that the tools employed (the concepts of rights, justice, fairness, *etc.*) are incorrect or inappropriate, but that they have not been applied to the issues of gender and the family. Instead of rejecting traditional approaches to the understanding of justice, Okin chooses to apply one of the leading theories of distributive justice (John Rawls's) to the issue of gender and the family.

### II. The Applicability of Theories of Justice to the Family

#### A. Traditional political philosophy has failed to apply theories of justice to the family primarily for one (or both) of the following two reasons:

1. *The Idealization of the Family*: Okin believes that the idealization of the family is sometimes partly responsible for its internal structure being ignored by political philosophers. Some have treated the family as being "beyond" considerations of justice or, somehow, "above" justice. Okin argues that the family structure and relationships between family members are appropriate subjects for judgments of justice. While many families are guided as well by considerations that we see as being loftier than merely giving people their "due," to be morally acceptable, an institution like the family has to *at least* give everyone their "due."

- a) *The Implications of Viewing the Family as Beyond Justice*: Okin claims that women are disadvantaged by the view that the family is not a fit subject of judgments of justice. “[W]omen, especially, are likely to change the whole course of their lives because of family commitments” (p. 32).
    - (1) *Criticism*: Okin doesn’t even consider the respects in which men change their lives because of family commitments. Fathers work longer hours and take on additional responsibilities at work. Furthermore, Okin doesn’t consider the respects in which viewing family relationships as being “beyond justice” might be beneficial for women who adopt a “traditional role.” If family relationships are viewed as grounded primarily on the basis of giving each his “due,” those who are less financially independent may be disadvantaged. Still, Okin seems quite right that familial relationships aren’t “beyond justice” in the sense that we can’t evaluate them as just or unjust.
  - 2. *The Acceptance of the “Necessity” of Familial Injustice*: Some have seen the structure of the family, however unjust it might be, as being “necessary.” Okin denies that there is any natural necessity to the current family structures: “The things that make traditional families unjust are not matters of natural necessity . . . There is surely nothing in our natures that requires men not to be equal participants in the rearing of their children” (p. 39).
- B. Okin concludes that the family structure is an appropriate subject for a theory of justice to address.
- III. *“Libertarianism: Matriarchy, Slavery, and Dystopia”*: In Chapter 4, Okin attempts to argue that inclusion of women into libertarian political theories leads to an obviously unacceptable consequence and, hence, a refutation of libertarianism. The reasoning is that any adequate theory of justice must include women’s perspectives equally with men’s. But, when we attempt to modify libertarian theories to do this, we are led to a morally repugnant conclusion that no libertarian would accept. Therefore, libertarianism is an inadequate theory of justice. (If this were to turn out to be correct, it would be an extremely exciting result of Okin’s extension of political theories to issues of gender and the family.)
- A. *The Argument*:
    - 1. *Premises*:
      - a) *Reproductive Roles*: Inclusion of the perspective of women in political theory requires inclusion of their unique role in reproduction: “[W]omen, and only women, have the natural capacity to produce *people*” (p. 76).
      - b) *Entitlement to One’s Product*: Libertarian theories of justice in holdings are based on the claim that one owns what one produces
    - 2. *The Conclusion*:
      - a) Libertarianism entails that all people are owned exclusively by their mothers. This conclusion attacks libertarianism in two ways.
        - (1) *Moral Repugnance*: The conclusion that people are *owned* by their mothers is morally unacceptable. Since libertarianism implies it, we must reject libertarianism.

- (2) *Inconsistency*: Libertarianism presupposes *self* ownership, but, as Okin has argued, it also implies that each of us is owned by another. Therefore, it is inconsistent and has to be rejected on these grounds.

B. *Criticisms*:

1. Okin recognizes that Nozick rejects this unsavory conclusion, but argues that the two ways he suggests to avoid it are unsuccessful. (Nozick doesn't *develop* either of these ideas.)
    - a) *Nature of the Process of Creating Humans Precludes it Generating Property Rights*: Nozick suggests that there is something about the process by which human beings are produced that is special in such a way that the producer does not gain property rights as a result of the process.
      - (1) *Okin's Criticism*: Okin rejects this, arguing that Nozick cannot, consistent with his theory, cite any special features of the process that produces human beings that should undermine libertarian claims to ownership of the product.
    - b) *Intrinsic Nature of Humans Precludes Their Being Owned by Their Makers*: Nozick suggests that there might be something intrinsic to the nature of human beings that precludes their being owned by their makers.
      - (1) *Okin's Criticism*: Okin argues that, since Nozick accepts voluntary slavery contracts as morally legitimate, he cannot argue that there is something special about the nature of persons that makes them unownable by *anyone*, including their creators.
        - (a) *Reply*: Presumably, Nozick's point is not that there is something about human beings that precludes their being owned by others (even their parents), but that there is something special about human beings that precludes their being owned by *any* process other than their own voluntary informed consent.
  2. Concerning Okin's argument that Nozick's theory entails sole *maternal* ownership of children (rather than ownership by both parents), see pages 8 and 9 of the Okin handout for Philosophy 830 that is available on our class web site. (This is optional. I include a reference to it here only for those who are interested.)
- C. *Comment on the Issue*: Okin argues that one of the contributions of "including women" in political philosophy is that it will expose weaknesses of theories that would be otherwise invisible. The problem she raises for Nozick about production of human beings is supposed to be a showcase example in support of this claim. However, the claim seems undermined by the fact that Nozick himself recognizes that production of human beings could, if not treated separately, create a problem for the "production theory of ownership". (And this problem has been discussed by other political philosophers.) Whatever the merits of Nozick's suggested replies, and independently of whether the libertarian can successfully solve the problem by any means, this undermines Okin's claim that this is a problem that arises only when one "includes women" in political philosophy or it undermines the claim that traditional philosophers have not "included women."

IV. *Rawlsian Hypothetical Contractarianism*:

- A. *Rawls's Oversights*: Okin argues that issues of gender and the family are almost entirely ignored in Rawls's presentation of his theory in *A Theory of Justice*.

1. *Gender and the Veil of Ignorance*: Though it isn't explicitly stated in *A Theory of Justice*, Okin notes that Rawls has said in later writings that he intends for the "veil of ignorance" to include knowledge of one's sex. This will provide, Okin tries to show, a powerful moral critique of contemporary gender roles in our society.
  2. *The Family*:
    - a) The family only enters Rawls's discussion in *A Theory of Justice* in three ways:
      - (1) "as the link between generations necessary for a just savings principle" (to ensure that earlier generations will save for later ones);
      - (2) "as an obstacle to fair equality of opportunity"; and,
      - (3) "as the first school or moral development."
    - b) Rawls never examines the justice of the family, never tries to develop principles of justice for familial relations nor to extend his principles of justice to the family. Rawls sees this task as being beyond the scope of his book saying, "in a broader inquiry the institution of the family might be questioned, and other arrangements might indeed prove to be preferable" (p. 463) and expressing hopes that, if this is so, his theory of social justice can be adapted to whatever social structure would be preferable to the family.
      - (1) Okin criticizes this. While what Okin initially says sounds like just a complaint that Rawls isn't addressing the problem *she* wants him to address, I interpret what lies behind her criticism to be that one can't adequately do what Rawls attempts to do in *A Theory of Justice* without examining the justice of the family. This is what she attempts to argue in the next section (pp. 97-101).
- B. *Rawls's Theory and Feminist Criticism*: According to Okin:
1. Giving Rawls a feminist reading can help to solve three problems with Rawls's theory. These problems are:
    - a) Rawls's theory is unacceptably egoistic and individualist (because of the assumption of mutual disinterest, *etc.*);
    - b) Rawls's theory is of little relevance to real people thinking about justice; and,
    - c) In its attempt to justify universalist and impartial principles, Rawls's theory ignores relevant differences between people and their historical and social circumstances.
  2. *Ignoring Sex Will Entail the Unjustifiability of Gender*: Suppose we follow Rawls's suggestion (made in his later writings) that we treat one's sex as the sort of morally irrelevant, idiosyncratic feature of a person that is covered by the veil of ignorance. Then, as with a person's race, religion, nationality, *etc.*, the veil of ignorance would prevent contractors from knowing their sex. In this case, Okin claims, they would choose a "genderless" society and they would pay particular attention to the family—the "first school of social justice".
    - a) The contractors would agree to social inequalities only where these worked to the advantage of the worst off and only if the preferred positions were open to all under conditions of fair equality of opportunity. Because women are so often disadvantaged in our society, contractors would be especially concerned with how any social

inequalities would affect women. Gender roles have the following adverse effects on women's life prospects:

- (1) they limit the "free choice of occupation" under equal conditions;
  - (2) they result in unequal political representation; and,
  - (3) they undermine the equality of the "social bases of self esteem."
- b) Furthermore, because gender roles are, by definition, not open to all under conditions of fair equality of opportunity, any such roles that advantage one group over another (even if they *did* work to the advantage of the worst off) would be rejected.
3. *The Ineliminability of Knowledge of One's Sex in a Gendered Society—Limitations on the Veil of Ignorance:* Okin argues, though, that sex—unlike race, religion, national origin, intelligence, *etc.*—probably cannot be treated as a "contingent and morally irrelevant characteristic, such that human beings really can hypothesize ignorance of this fact about them" (p.105). If this is correct, it has several implications.
- a) As a practical matter, we cannot use Rawls's methodology to reach consensus about moral matters.
  - b) We can remedy this to some extent by ensuring that moral and political theory is developed "only with the full participation of both sexes. . . this will require that women take their places with men in the dialogue in approximately equal numbers and in positions of comparable influence" (p. 107). This is not an ideal solution since Rawls thinks of the principles of justice as being ones that we *all* accept from the standpoint of the original position.
    - (1) Okin doesn't recognize all the limitations of this proposal. So long as there is a gendered society, those women who "take their places with men in the dialogue [concerning moral and political theory] in approximately equal numbers and in positions of comparable influence" will be women who have been successful in their careers in academia and the law. They may well display, on average, different characteristics and different experiences from those of women who have not been successful.
  - c) The only way to fully realize the Rawlsian thought experiment is to eliminate gender from society.
4. *Criticisms:*
- a) *On the Ineliminability of Knowledge of One's Sex in a Gendered Society:* This is largely an empirical issue and one that is difficult to settle. Certainly, in a society with significant gender roles, it will be difficult for some to imagine ignorance of their sex. By the same token, in a society where there is longstanding, deep, institutionalization of racial and religious differences, we may doubt people's abilities to "imagine away" their differences in these respects. Okin needs to say more to indicate why knowledge of one's sex is unique.
  - b) *On the Relevance of the Limitation, if it Exists:* In any case, the limitation, if it exists, is not relevant to the *correctness* of Rawls's theory. In *A Theory of Justice*, he holds that principles of justice are those principles we *would* agree to under appropriate initial conditions. This is a matter fact about us. If some of us are not sufficiently imbued with moral imagination to see what we would agree to under such conditions,

then there will be limitations on Rawls's theory as an aid to get people to see what justice requires, but not as a theory of justice.

V. *Challenging the Public/Domestic Dichotomy*: What is of most importance to us in this chapter is Okin's argument, made in the last section, against the "public/domestic dichotomy".

A. Okin argues that "the personal *is* political, and the public/domestic dichotomy is a misleading construct, which obscures the cyclical pattern of inequalities between men and women" (p. 111). She defends this on the grounds that:

1. "power—which has always been understood as paradigmatically political—is of central importance in family life;"
2. "the domestic sphere is itself *created* by political decisions;"
3. the family "is the place where we *become* our gendered selves;" and,
4. "the division of labor within the gendered-structure family raises both practical and psychological barriers against women in all other spheres of life" (p. 111).

VI. Toward a Humanist Justice

A. *Okin's Assertion*: "Any just and fair solution to the urgent problem of women's and children's vulnerability must encourage and facilitate the equal sharing by men and women of paid and unpaid work, of productive and reproductive labor" (p. 171). She advocates as an ideal an androgynous society in which there are no divisions of labor or social roles based on one's sex.

1. *The Rawlsian Appeal*: Okin claims that, in the original position, "we would arrive at a basic model that would absolutely minimize gender" (p. 175).

a) *Criticism*: This claim may be correct, but Okin presents no argument for it whatsoever. Okin's attempt to appeal to a Rawlsian argument for her conclusion is flawed in a number of respects.

(1) As she mentions in a footnote, she believes that "it is probably more difficult for us, having grown up in a gender-structured society, to imagine not knowing our sex than anything else about ourselves" (p. 174). This doesn't cast doubt on the Rawlsian theory or its "in principle" application of issues of gender. But it does cast doubt on our ability to use it successfully as Okin here tries to do.

(2) Her account of Rawls's theory is extremely sketchy and, since Rawls doesn't apply the theory to issues of "gender justice," we have little idea how to test the truth of Okin's claim about what would be agreed to in the original position.

(3) She seems insufficiently sensitive to the effect that *general* truths about psychology could affect the conclusions she draws.

(a) While she is right that the "veil of ignorance" would deny us "knowledge of our beliefs about the characteristics of men and women" (p. 174), it would not deny us knowledge about the *true* characteristics of men and women. If the beliefs of "traditionalists" would support a conclusion different from Okin's, then she will have to argue that *in the original position* people would not hold this other belief. That requires her to argue that her conceptions about the natural differences between men and women are the *true* ones. She doesn't do this, or even seem to recognize the need to do it.

- B. *Okin's Recommendations for the Ideal Society*: Based on this ideal of an androgynous society with respect to divisions of labor and social roles, Okin makes several recommendations.
1. *Equally Shared Parenting*: Okin argues for a presumption that both parents would share parenting responsibilities, both economic support and direct care, equally. Many of her further recommendations are made based in part on their capacity to facilitate this goal.
    - a) While there is some discussion of the financial responsibilities of divorced and unmarried fathers, there is no mention of responsibilities of unmarried and divorced fathers for the direct care and nurturing of children. And she seems to presume that, upon divorce, one parent will get sole custody (p. 179). It would seem that a full commitment to equally shared parenting would require steps to ensure that unmarried and divorced fathers are not denied the chance to develop and maintain a parenting relationship with their children. (This conclusion is supported by her concern to undermine traditional gender stereotypes, too.)
  2. *Reorganizing Work Life*: Okin argues for a number of proposed changes to the workplace to facilitate the goal of equally shared parenting. These changes include flexible work schedules, parental leave time, and mandatory child care facilities.
  3. *Eliminating Gender Stereotypes*: Okin addresses issues of preferential treatment forms of affirmative action in the context of education, but her discussion suggests that it applies generally. Noting that the overwhelming majority of elementary teachers are women and almost all school superintendents are men, she says, "sex should be regarded as a relevant qualification in the hiring of both teachers and administrators, until these proportions have become more equal."
    - a) Presumably this means that school districts should give preference to men for elementary school teaching positions over otherwise better qualified women. She doesn't discuss it, but her position would seem to suggest, as well, that male parents be given preference in the award of custody of children of divorce over otherwise better qualified female parents until the current imbalance in custody arrangements are more nearly equal. (Currently, over 90% of sole custody cases are maternal custody.)
  4. *Education for "Gender Just" Society*: "Children need . . . to be taught about the present inequalities, ambiguities, and uncertainties of marriage, the facts of workplace discrimination and segregation, and the likely consequences of making life choices based on assumptions about gender" (p. 177).
- C. *The Benefits of a "Gender Just" Society*. You're on your own on this chapter. It is pretty straightforward.
- D. *Justice in an Imperfect World*: Given the fact that many would choose a "traditional" division of labor in a marriage, several things have to be done to protect women and children from the choices that these traditionalists make. "Gender-structured marriage . . . should be subjected to a number of legal requirements, at least when there are children" (p. 180).
1. *Equal Shares of Earned Income*: Both partners should have a legal entitlement to all income. "The clearest and simplest way of doing this would be to have employers make out wage checks equally divided between the earner and the partner who provides all or most of his or her unpaid domestic services" (p. 181).
    - a) *Criticisms*:
      - (1) *Interventionism*:

- (a) Okin claims that “this proposal does not constitute unwarranted invasion of privacy or any more state intervention into the life of families than currently exists” (p. 181).
  - (i) However, it is certainly more “interventionist” in the employer/employee relationship. Since employers are currently *allowed* to split checks now, her proposal must be to *require* employers to do this. Would they be required to first determine whether the spouse or “domestic partner” does, in fact, “provide all or most of [the employee’s] . . . unpaid domestic services” (p. 181)?
- (2) *Unfairness:*
  - (a) *In Comparison to Other “Domestic Partners”:* Should the “domestic partner” of a person earning \$300,000 a year with one child and plenty of paid assistance to do this receive 10 times the income of a “domestic partner” of a person earning \$30,000 with five children and no paid assistance? Okin’s claim that the “currently unpaid labor of families is just as important as the paid labor” seems to violate an “equal pay for equal work” (or a “comparable pay for comparable work”) requirement.
  - (b) *In Comparison to the Income Earner:* Okin wants to “to insist that the earnings be recognized as equally earned by the two persons” (p. 181), but she gives no argument to show that they are.
- (3) *Adverse Practical Implications:* Okin doesn’t consider any adverse practical implications of such a policy. While we can’t know what all the practical implications of her proposals would be, she isn’t shy about discussing the beneficial practical implications without any empirical evidence. Some possible adverse practical implications to consider include:
  - (a) the possibility that Okin’s proposal would impede progress toward the sort of genderless society she idealizes by providing an alternative to being individually financially responsible for oneself and one’s children which some would find more attractive; and,
  - (b) the possibility that the proposed system would make it far less likely that high income people would be willing to marry or establish a domestic partner relationship with those having lower earning ability.
- 2. *Alimony and Child Support:* Okin claims that child support and alimony should be higher than they presently are. She doesn’t say what level they are presently set at or upon what basis it is determined so this is a difficult claim to analyze. (And, of course, there have been significant changes in the laws concerning alimony and child support since Okin’s book was published.) She does, though, once again apparently assume that, upon divorce, there will be a sole custodial parent. This seems inconsistent with her ideal of ensuring that both parents share equally in child rearing.