

tique of Rawls has been very influential in political theory, prompting a reply from Rawls and encouraging both feminists and liberals to rethink liberal approaches to justice.

Later in her career, Okin examined questions of multiculturalism, international development, and human rights. Her controversial and widely discussed "Is Multiculturalism Bad for Women?" is the subject of a 1999 book featuring her essay, commentaries, and a reply. Although the title suggests a broader focus, Okin centers on Will Kymlicka's liberal argument in favor of group rights for cultural minorities in the West. She notes that the cultural rights at issue often concern matters that directly affect women—such as sexuality, reproduction, and marriage—and worries that granting such rights can reinforce men's control over women. In their commentaries, Okin's critics claim that her work suffers from a variety of problems: paying insufficient attention to the actual voices of minority women; implying that Western societies actually embody liberal ideals of equality; and suggesting that feminism and liberalism are always compatible. Even her critics concede, however, that Okin's work raises important questions about the nature of group rights, multiculturalism, liberalism, and feminism.

Debra Satz of Stanford claimed that Okin, at the time of her death, was "perhaps the best feminist political philosopher in the world," and Jane J. Mansbridge of Harvard remarked, "Her insights on gender and the family shed new light on almost every political theory of major importance."



from Justice, Gender, and the Family (1989)

Chapter 5: Justice as Fairness: For Whom?

John Rawls's *A Theory of Justice* has had the most powerful influence of any work of contemporary moral and political theory. The scope of Rawls's influence is indicated by the fact that all the theorists I have discussed so far make an issue of their respective disagreements with his method and, in most cases, with his conclusions.¹ Now, I turn to Rawls's

¹ *all the theorists ... his conclusions* [Unless otherwise indicated, notes to this selection are by the author rather than the editors of this anthology.] Bloom, having written an extremely critical analysis of Rawls's *Theory* soon after it appeared ("Justice: John

theory of justice as fairness, to examine not only what it explicitly says and does not say, but also what it *implies*, on the subjects of gender, women, and the family.

There is strikingly little indication, throughout most of *A Theory of Justice*, that the modern liberal society to which the principles of justice are to be applied is deeply and pervasively gender-structured. Thus an ambiguity runs throughout the work, which is continually noticeable to anyone reading it from a feminist perspective. On the one hand, as I shall argue, a consistent and wholehearted application of Rawls's liberal principles of justice can lead us to challenge fundamentally the gender system of our society. On the other hand, in his own account of his theory, this challenge is barely hinted at, much less developed. After critiquing Rawls's theory for its neglect of gender, I shall ask two related questions: What effects does a feminist reading of Rawls have on some of his fundamental ideas (particularly those most attacked by critics); and what undeveloped potential does the theory have for feminist critique, and in particular for our attempts to answer the question, Can justice co-exist with gender?

Rawls vs. the Tradition of Political Philosophy," *American Political Science Review* 69, no. 2 [1975]), is still trying to ridicule its defense of a liberal society that respects its members' equal rights to make choices about their modes of life (*The Closing of the American Mind* [New York: Simon & Schuster, 1987]), pp. 30, 229. MacIntyre, in *Whose Justice? Whose Rationality?* (Notre Dame: University of Notre Dame Press, 1988), repeatedly focuses on one brief passage from Rawls, in which, stressing the heterogeneity of human aims, he claims that to subordinate all else to one end "strikes us as irrational, or more likely as mad" (MacIntyre, citing Rawls, pp. 165, 179, 337). It is only by taking the passage out of context that MacIntyre is able to infer that Rawls's critique of "dominant-end views" implies that Aristotle was mad, since Aristotle's conception of "the good life" is itself *quite* heterogeneous, requiring material goods and services, friends and children, as well as virtuous behavior and intellectual activity. Nozick's defense of the rights of individuals to what they acquire by luck and good fortune as well as by effort is primarily directed against the redistributive implications of Rawls's difference principle (*Anarchy, State, and Utopia* [New York: Basic Books, 1974], esp. chap. 7). Sandel's entire argument in *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982) is directed against Rawls, and he makes only a few vague gestures toward any alternative theory. Finally, Walzer clearly dissents from (and apologetically caricatures) Rawls's *method* of theorizing about justice, but his own arguments and conclusions about what is just, at least in the context of our society, suggest that he has far fewer disagreements with Rawls's conclusions than these other theorists (*Spheres of Justice* [New York: Basic Books, 1983], esp. pp. 79–82; *Interpretation and Social Criticism* [Cambridge: Harvard University Press, 1987], pp. 11–17).

Central to Rawls's theory of justice is a construct, or heuristic device, that is both his most important single contribution to moral and political theory and the focus of most of the controversy his theory still attracts, nearly twenty years after its publication. Rawls argues that the principles of justice that should regulate the basic institutions of society are those that would be arrived at by persons reasoning in what is termed "the original position." His specifications for the original position are that "the parties" who deliberate there are rational and mutually disinterested, and that while no limits are placed on the general information available to them, a "veil of ignorance" conceals from them all knowledge of their individual characteristics and their social position. Though the theory is presented as a contract theory, it is so only in an odd and metaphoric sense, since "no one knows his situation in society nor his natural assets, and therefore no one is in a position to tailor principles to his advantage." Thus they have "no basis for bargaining in the usual sense." This is how, Rawls explains, "the arbitrariness of the world ... [is] corrected for," in order that the principles arrived at will be fair. Indeed, since no one knows who he is, all think identically and the standpoint of any one party represents that of all. Thus the principles of justice are arrived at unanimously.¹ Later in this chapter, I shall address some of the criticisms that have been made of Rawls's original position and of the nature of those who deliberate there. I shall show that his theory can be read in a way that either obviates these objections or answers them satisfactorily. But first, let us see how the theory treats women, gender, and the family.

Justice for All?

Rawls, like almost all political theorists until very recently, employs in *A Theory of Justice* supposedly generic male terms of reference.² *Men, mankind, he, and his* are interspersed with gender-neutral terms of reference such as *individual*

and *moral person*. Examples of intergenerational concern are worded in terms of "fathers" and "sons," and the difference principle is said to correspond to "the principle of fraternity."³ This linguistic usage would perhaps be less significant if it were not for the fact that Rawls self-consciously subscribes to a long tradition of moral and political philosophy that has used in its arguments either such "generic" male terms or more inclusive terms of reference ("human beings," "persons," "all rational beings as such"), only to exclude women from the scope of its conclusions. Kant is a clear example.⁴ But when Rawls refers to the generality and universality of Kant's ethics, and when he compares the principles chosen in his own original position to those regulative of Kant's kingdom of ends, "acting from [which] expresses our nature as free and equal rational persons,"⁵ he does not mention the fact that women were not included among those persons to whom Kant meant his moral theory to apply. Again, in a brief discussion of Freud's account of moral development, Rawls presents Freud's theory of the formation of the male superego in largely gender-neutral terms, without mentioning the fact that Freud considered women's moral development to be sadly deficient, on account of their incomplete resolution of the Oedipus complex.⁶ Thus there is a blindness to the sexism of the tradition in which Rawls is a participant, which tends to render his terms of reference more ambiguous than they might otherwise be. A feminist reader finds it difficult not to keep asking, Does this theory of justice apply to women?

This question is not answered in the important passages listing the characteristics that persons in the original position are not to know about themselves, in order to formulate impartial principles of justice. In a subsequent article, Rawls has made it clear that sex is one of those morally irrelevant contingencies that are hidden by the veil of ignorance.⁷ But throughout *A Theory of Justice*, while the

1 *Thus the principles ... unanimously* Rawls, *A Theory of Justice* (Boston: Harvard University Press, 1971), pp. 139-41; sec. 24 *passim*.

2 *Rawls ... male terms of reference* He no longer does this in more recent writings, where the language is gender-neutral. See, for example, "Kantian Constructivism in Moral Theory," *The Journal of Philosophy* 77, no. 9 (1980); "Justice as Fairness: Political Not Metaphysical," *Philosophy and Public Affairs* 14, no. 3 (1985). As will become apparent, this gender neutrality is to a large extent false, since Rawls does not confront the justice or injustice of gender, and the gendered family in particular.

3 *Men, mankind ... fraternity* Rawls, *Theory*, pp. 105-06, 208-09, 288-89.

4 *a long tradition ... clear example* See Susan Moller Okin, "Women and the Making of the Sentimental Family," *Philosophy and Public Affairs* 11, no. 1 (1982): 78-82; Carole Pateman, *The Sexual Contract* (Stanford: Stanford University Press, 1988), pp. 168-73.

5 *Rawls refers ... rational persons* Rawls, *Theory*, pp. 251, 256. See also "Kantian Constructivism in Moral Theory," *Journal of Philosophy* (September 1980), p. 77(9): 515-72.

6 *Rawls presents Freud's ... Oedipus complex* Rawls, *Theory*, p. 459.

7 *sex is ... veil of ignorance* Rawls, "Fairness to Goodness," *Philosophical Review* 84 (1975): 537. He says: "That we have one con-

list of things unknown by a person in the original position includes "his place in society, his class position or social status, ... his fortune in the distribution of natural assets and abilities, his intelligence and strength, and the like, ... his conception of the good, the particulars of his rational plan of life, even the special features of his psychology,"¹ "his" sex is not mentioned. Since the parties also "know the general facts about human society,"² presumably including the fact that it is gender-structured both by custom and still in some respects by law, one might think that whether or not they knew their sex might matter enough to be mentioned. Perhaps Rawls meant to cover it by his phrase "and the like," but it is also possible that he did not consider it significant.

The ambiguity is exacerbated by the statement that those free and equal moral persons in the original position who formulate the principles of justice are to be thought of not as "single individuals" but as "heads of families" or "representatives of families."³ Rawls says that it is not necessary to think of the parties as heads of families, but that he will generally do so. The reason he does this, he explains, is to ensure that each person in the original position cares about the well-being of some persons in the next generation. These "ties of sentiment" between generations, which Rawls regards as important for the establishment of intergenerational justice—his just savings principle—would otherwise constitute a problem because of the general assumption that the parties in the original position are mutually disinterested. In spite of the ties of sentiment *within* families, then, "as representatives of families their interests are opposed as the circumstances of justice imply."⁴

The head of a family need not necessarily, of course, be a man. Certainly in the United States, at least, there has been a striking growth in the proportion of female-headed households during the last several decades. But the very fact that, in common usage, the term "female-headed household" is used *only* in reference to households without resident adult males implies the assumption that any present male takes precedence over a female as the household or family head.

ception of the good rather than another is not relevant from a moral standpoint. In acquiring it we are influenced by the same sort of contingencies that lead us to rule out a knowledge of our sex and class."

- 1 *the list ... his psychology* Rawls, *Theory*, p. 137; see also p. 12.
- 2 *the parties ... human society* Ibid., p. 137. Numerous commentators on *Theory* have made the objection that "the general facts about human society" are often issues of great contention.
- 3 *those free ... of families* Ibid., pp. 128, 146.
- 4 *as representatives ... justice imply* Ibid., p. 128; see also p. 292.

Rawls does nothing to contest this impression when he says of those in the original position that "imagining themselves to be fathers, say, they are to ascertain how much they should set aside for their sons by noting what they would believe themselves entitled to claim of their fathers."⁵ He makes the "heads of families" assumption only in order to address the problem of justice between generations, and presumably does not intend it to be a sexist assumption. Nevertheless, he is thereby effectively trapped into the public/domestic dichotomy and, with it, the conventional mode of thinking that life within the family and relations between the sexes are not properly regarded as part of the subject matter of a theory of social justice.

Let me here point out that Rawls, for good reason, states at the outset of his theory that the family is part of the subject matter of a theory of social justice. "For *us*" he says, "the primary subject of justice is the basic structure of society, or more exactly, the way in which the major social institutions distribute fundamental rights and duties and determine the division of advantages from social cooperation." The political constitution and the principal economic and social arrangements are basic because "taken together as one scheme, [they] define men's rights and duties and influence their life prospects, what they can expect to be and how well they can hope to do. The basic structure is the primary subject of justice *because its effects are so profound and present from the start*" (emphasis added).⁶ Rawls specifies "the monogamous family" as an example of such major social institutions, together with the political constitution, the legal protection of essential freedoms, competitive markets, and private property.⁷ Although this initial inclusion of the family as a basic social institution to which the principles of justice should apply is surprising in the light of the history of liberal thought, with its dichotomy between domestic and public spheres, it is necessary, given Rawls's stated criteria for inclusion in the basic structure. It would scarcely be possible to deny that different family structures, and different distributions of rights and duties within families, affect men's "life prospects, what they can expect to be and how well they can hope to do," and even more difficult to deny their effects on the life prospects of

5 *imagining themselves ... their fathers* Ibid., p. 289.

6 *taken together ... the start* Ibid., p. 7.

7 *the monogamous ... private property* Ibid., pp. 7, 462-63. Later, he takes a more agnostic position about the compatibility of his principles of justice with socialist as well as private property economies (sec. 42).

women. There is no doubt, then, that in Rawls's initial definition of the sphere of social justice, the family is included and the public/domestic dichotomy momentarily cast in doubt. However, the family is to a large extent ignored, though assumed, in the rest of the theory.¹

The Barely Visible Family

In part 1 of *A Theory of Justice*, Rawls derives and defends the two principles of justice—the principle of equal basic liberty, and the “difference principle” combined with the requirement of fair equality of opportunity. These principles are intended to apply to the basic structure of society. They are “to govern the assignment of rights and duties and to regulate the distribution of social and economic advantages.”² Whenever the basic institutions have within them differences in authority, in responsibility, or in the distribution of resources such as wealth or leisure, the second principle requires that these differences must be to the greatest benefit of the least advantaged and must be attached to positions accessible to all under conditions of fair equality of opportunity.

In part 2, Rawls discusses at some length the application of his principles of justice to almost all the institutions of the basic social structure that are set out at the beginning of the book. The legal protection of liberty of thought and conscience is defended, as are democratic constitutional institutions and procedures; competitive markets feature prominently in the discussion of the just distribution of income; the issue of the private or public ownership of the means of production is explicitly left open, since Rawls argues that his principles of justice might be compatible with certain versions of either.³ But throughout all these discussions, the issue of whether the monogamous family, in either its traditional or any other form, is a just social institution, is never raised. When Rawls announces that “the sketch of the system of institutions that satisfy the two prin-

ciples of justice is now complete,”⁴ he has paid no attention at all to the internal justice of the family. In fact, apart from passing references, the family appears in *A Theory of Justice* in only three contexts: as the link between generations necessary for the just savings principle; as an obstacle to fair equality of opportunity (on account of the inequalities among families); and as the first school of moral development. It is in the third of these contexts that Rawls first specifically mentions the family as a just institution—not, however, to consider whether the family “in some form” is a just institution but to assume it.⁵

Clearly, however, by Rawls's own reasoning about the social justice of major social institutions, this assumption is unwarranted. The serious significance of this for the theory as a whole will be addressed shortly. The central tenet of the theory, after all, is that justice as fairness characterizes institutions whose members could hypothetically have agreed to their structure and rules from a position in which they did not know which place in the structure they were to occupy. The argument of the book is designed to show that the two principles of justice are those that individuals in such a hypothetical situation would agree upon. But since those in the original position are the heads or representatives of families, they are not in a position to determine questions of justice within families. As Jane English has pointed out, “By making the parties in the original position heads of families rather than individuals, Rawls makes the family opaque to claims of justice.”⁶ As far as children are concerned, Rawls makes an argument from paternalism for their temporary inequality and restricted liberty.⁷ (This, while it may suffice in basically sound, benevolent families, is of no use or comfort in abusive or neglectful situations, where Rawls's principles would seem to require that children be protected through the intervention of outside authorities.) But wives (or whichever adult member[s] of a family are not its “head”) go completely unrepresented in the original position. If families are just, as Rawls later assumes, then they must become just in some different way (unspecified

¹ *However, the family ... the theory* It is noteworthy that in a subsequent paper on the subject of why the basic structure is the primary subject of justice, Rawls does not mention the family as part of the basic structure. See “The Basic Structure as Subject,” *American Philosophical Quarterly* 14, no. 2 (1977): 159.

² *They are ... economic advantages* Rawls, *Theory*, p. 61.

³ *Rawls argues ... of either* For a good recent discussion of Rawls's view of just property institutions, see Richard Krouse and Michael McPherson, “Capitalism, Property-Owning Democracy, and the Welfare State,” in *Democracy and the Welfare State*, ed. Amy Gutmann (Princeton: Princeton University Press, 1988).

⁴ *the sketch ... now complete* Rawls, *Theory*, p. 303.

⁵ *Rawls first ... assume it* Ibid., pp. 463, 490. See Deborah Kearns, “A Theory of Justice—and Love; Rawls on the Family,” *Politics (Australasian Political Studies Association Journal)* 18, no. 2 (1983): 39–40, for an interesting discussion of the significance for Rawls's theory of moral development on his failure to address the justice of the family.

⁶ *By making ... of justice* English, “Justice Between Generations,” *Philosophical Studies* 31, no. 2 (1977): 95.

⁷ *makes an argument ... restricted liberty* Rawls, *Theory*, pp. 208–09.

by him) from other institutions, for it is impossible to see how the viewpoint of their less advantaged members ever gets to be heard.

There are two occasions when Rawls seems either to depart from his assumption that those in the original position are "family heads" or to assume that a "head of a family" is equally likely to be a woman as a man. In the assignment of the basic rights of citizenship, he argues, favoring men over women is "justified by the difference principle... only if it is to the advantage of women and acceptable from their standpoint." Later he seems to imply that the injustice and irrationality of racist doctrines are also characteristic of sexist ones.¹ But in spite of these passages, which appear to challenge formal sex discrimination, the discussions of institutions in part 2 implicitly rely, in a number of respects, on the assumption that the parties formulating just institutions are (male) heads of (fairly traditional) families, and are therefore not concerned with issues of just distribution within the family or between the sexes. Thus the "heads of families" assumption, far from being neutral or innocent, has the effect of banishing a large sphere of human life—and a particularly large sphere of most women's lives—from the scope of the theory.

During the discussion of the distribution of wealth, for example, it seems to be assumed that all the parties in the original position expect, once the veil of ignorance is removed, to be participants in the paid labor market. Distributive shares are discussed in terms of household income, but reference to "individuals" is interspersed into this discussion as if there were no difference between the advantage or welfare of a household and that of an individual.² This confusion obscures the fact that wages are paid to employed members of the labor force, but that in societies characterized by gender (all current societies) a much larger proportion of women's than men's labor is unpaid and is often not even acknowledged as labor. It also obscures the fact that the resulting disparities in the earnings of men and women, and the economic dependence of women on men, are likely to affect power relations within the household, as well as access to leisure, prestige, political power, and so on, among its adult members. Any discussion of justice *within* the family would have to address these issues. (In the last two chap-

ters of this book,³ I shall examine current gendered family structure and practices in the light of standards of justice, including Rawls's, and, finding them wanting, suggest some ways in which the family, and marriage in particular, might be reformed so as to become more just.)

Later, in Rawls's discussion of the obligations of citizens, his assumption that justice is agreed on by heads of families in the original position seems to prevent him from considering another issue of crucial importance: women's exemption from the draft. He concludes that military conscription is justifiable in the case of defense against an unjust attack on liberty, so long as institutions "try to make sure that the risks of suffering from these imposed misfortunes are more or less evenly shared by all members of society over the course of their life, and that there is no avoidable *class* bias in selecting those who are called for duty" (emphasis added).⁴ The complete exemption of women from this major interference with the basic liberties of equal citizenship is not even mentioned.

In spite of two explicit rejections of the justice of formal sex discrimination in part 1, then, Rawls seems in part 2 to be heavily influenced by his "family heads" assumption. He does not consider as part of the basic structure of society the greater economic dependence of women and the sexual division of labor within the typical family, or any of the broader social ramifications of this basic gender structure. Moreover, in part 3, where he takes as a given the justice of the family "in some form," he does not discuss any alternative forms. Rather, he sounds very much as though he is thinking in terms of traditional, gendered family structure and roles. The family, he says, is "a small association, normally characterized by a definite hierarchy, in which each member has certain rights and duties." The family's role as moral teacher is achieved partly through parental expectations of the "virtues of a good son or a good daughter." In the family and in other associations such as schools, neighborhoods, and peer groups, Rawls continues, one learns various moral virtues and ideals, leading to those adopted in the various statuses, occupations, and family positions of later life. "The content of these ideals is given by the various conceptions of a good wife and husband, a good friend and citizen, and so on."⁵ Given these unusual departures from the supposedly generic male terms of reference used

1 *the injustice ... sexist ones* Ibid., pp. 99, 149.

2 *reference to "individuals" ... an individual* Ibid., pp. 270-74, 304-09.

3 *the last two chapters of this book* [editors' note] The last chapter is reprinted below.

4 *try to ... for duty* Ibid., pp. 380-81.

5 *in part 3 ... and so on* Ibid., pp. 467, 468.

Gender, the Family, and the Development of a Sense of Justice

Apart from being briefly mentioned as the link between generations necessary for Rawls's just savings principle, and as an obstacle to fair equality of opportunity, the family appears in Rawls's theory in only one context—albeit one of considerable importance: as the earliest school of moral development. Rawls argues, in a much-neglected section of part 3 of *A Theory of Justice*, that a just, well-ordered society will be stable only if its members continue to develop a sense of justice, “a strong and normally effective desire to act as the principles of justice require.”³ He turns his attention specifically to childhood moral development, aiming to indicate the major steps by which a sense of justice is acquired.

It is in this context that Rawls *assumes* that families are just. Moreover, these supposedly just families play a fundamental role in his account of moral development. First, the love of parents for their children, which comes to be reciprocated, is important in his account of the development of a sense of self-worth. By loving the child and being “worthy objects of his admiration ... they arouse in him a sense of his own value and the desire to become the sort of person that they are.” Rawls argues that healthy moral development in early life depends upon love, trust, affection, example, and guidance.⁴

At a later stage in moral development, which he calls “the morality of association,” Rawls perceives the family, though he describes it in gendered and hierarchical terms, as the first of many associations in which, by moving through a sequence of roles and positions, our moral understanding increases. The crucial aspect of the sense of fairness that is learned during this stage is the capacity—which, as I shall argue, is essential for being able to think *as if* in the original position—to take up the different points of view of others and to learn “from their speech, conduct, and countenance” to see things from their perspectives. We learn to perceive, from what they say and do, what other people's ends, plans, and motives are. Without this experience, Rawls says, “we cannot put ourselves into another's place and find out what we would do in his position,” which we need to be able to do in order “to regulate our own conduct in the appropriate

throughout the book, it seems likely that Rawls means to imply that the goodness of daughters is distinct from the goodness of sons, and that of wives from that of husbands. A fairly traditional gender system seems to be assumed.

Rawls not only assumes that “the basic structure of a well-ordered society includes the family *in some form*” (emphasis added); he adds that “in a broader inquiry the institution of the family might be questioned, and other arrangements might indeed prove to be preferable.”¹ But why should it require a broader inquiry than the colossal task in which *A Theory of Justice* is engaged, to raise questions about the institution and the form of the family? Surely Rawls is right in initially naming it as one of those basic social institutions that most affect the life chances of individuals and should therefore be part of the primary subject of justice. The family is not a private association like a church or a university, which vary considerably in the type and degree of commitment each expects from its members, and which one can join and leave voluntarily. For although one has some choice (albeit a highly constrained one) about marrying into a gender-structured family, one has no choice at all about being born into one. Rawls's failure to subject the structure of the family to his principles of justice is particularly serious in the light of his belief that a theory of justice must take account of “how [individuals] get to be what they are” and “cannot take their final aims and interests, their attitudes to themselves and their life, as given.”² For the gendered family, and female parenting in particular, are clearly critical determinants in the different ways the two sexes are socialized—how men and women “get to be what they are.”

If Rawls were to assume throughout the construction of his theory that all human adults are participants in what goes on behind the veil of ignorance, he would have no option but to require that the family, as a major social institution affecting the life chances of individuals, be constructed in accordance with the two principles of justice. I shall begin to develop this positive potential of Rawls's theory in the final section of this chapter, and shall take it further in the concluding chapter of the book. But first I turn to a major problem for the theory that results from its neglect of the issue of justice within the family: its placing in jeopardy Rawls's account of how one develops a sense of justice.

1. *the basic structure ... be preferable* Ibid., pp. 462–63.

way by reference to it." Building on attachments formed in the family, participation in different roles in the various associations of society leads to the development of a person's "capacity for fellow feeling" and to "ties of friendship and mutual trust." Just as in the first stage "certain natural attitudes develop toward the parents, so here ties of friendship and confidence grow up among associates. In each case certain natural attitudes underlie the corresponding moral feelings: a lack of these feelings would manifest the absence of these attitudes."¹

This whole account of moral development is strikingly unlike the arid, rationalist account given by Kant, whose ideas are so influential in many respects on Rawls's thinking about justice. For Kant, who claimed that justice must be grounded in reason alone, any feelings that do not follow from independently established moral principles are morally suspect—"mere inclinations."² By contrast, Rawls clearly recognizes the importance of feelings, first nurtured within supposedly just families, in the development of the capacity for moral thinking. In accounting for his third and final stage of moral development, where persons are supposed to become attached to the principles of justice themselves, Rawls says that "the sense of justice is continuous with the love of mankind." At the same time, he acknowledges our particularly strong feelings about those to whom we are closely attached, and says that this is rightly reflected in our moral judgments: even though "our moral sentiments display an independence from the accidental circumstances of our world, ... our natural attachments to particular persons and groups still have an appropriate place." He indicates clearly that empathy, or imagining oneself in the circumstances of others, plays a major role in moral development. It is not surprising that he turns away from Kant, and toward moral philosophers such as Adam Smith, Elizabeth Anscombe, Philippa Foot, and Bernard Williams in developing his ideas about the moral emotions or sentiments.³

Rawls's summary of his three psychological laws of moral development emphasizes the fundamental importance of loving parenting for the development of a sense of justice. The three laws, Rawls says, are

not merely principles of association or of re-inforcement ... [but] assert that the active sentiments of love and friendship, and even the sense of justice, arise from the manifest intention of other persons to act for our good. Because we recognize that they wish us well, we care for their well-being in return.⁴

Each of the laws of moral development, as set out by Rawls, depends upon the one before it, and the first assumption of the first law is: "given that family institutions are just,...." Thus Rawls frankly and for good reason acknowledges that the whole of moral development rests at base upon the loving ministrations of those who raise small children from the earliest stages, and on the moral character—in particular, the *justice*—of the environment in which this takes place. At the foundation of the development of the sense of justice, then, are an activity and a sphere of life that, though by no means necessarily so, have throughout history been predominantly the activity and the sphere of women.

Rawls does not explain the basis of his assumption that family institutions are just. If gendered families are *not* just, but are, rather, a relic of caste or feudal societies in which roles, responsibilities, and resources are distributed not in accordance with the two principles of justice but in accordance with innate differences that are imbued with enormous social significance, then Rawls's whole structure of moral development would seem to be built on shaky ground. Unless the households in which children are first nurtured, and see their first examples of human interaction, are based on equality and reciprocity rather than on dependence and domination—and the latter is too often the case—how can whatever love they receive from their parents make up for the injustice they see before them in the relationship between these same parents? How, in hierarchical families in which sex roles are rigidly assigned, are we to learn, as Rawls's theory of moral development requires us, to "put ourselves into another's place and find out what we would do in his position"? Unless they are parented equally by adults of both sexes, how will children of both sexes come to develop a sufficiently similar and well-rounded moral psychology to enable them to engage in the kind of deliberation about justice that is exemplified in the original position? If both parents do not share in nurturing activities, are they both likely to maintain in adult life the

1 Without this ... these attitudes Ibid., pp. 469–71.

2 For Kant ... mere inclinations See Okin, "Reason and Feeling in Thinking about Justice," *Ethics* 99, no. 2 (1989): 231–35.

3 Rawls clearly recognizes ... emotions or sentiments Rawls, *Theory*, pp. 476, 475, 479ff.

4 not merely ... in return Ibid., p. 494; see also pp. 490–91.

capacity for empathy that underlies a sense of justice?¹ And finally, unless the household is connected by a continuum of just associations to the larger communities within which people are supposed to develop fellow feelings for each other, how will they grow up with the capacity for enlarged sympathies such as are clearly required for the practice of justice? Rawls's neglect of justice within the family is clearly in tension with the requirements of his own theory of moral development. Family justice must be of central importance for social justice.

I have begun to suggest a feminist reading of Rawls, drawing on his theory of moral development and its emphasis on the moral feelings that originate in the family. This reading can, I think, contribute to the strengthening of Rawls's theory against some of the criticisms that have been made of it.² For, in contrast with his account of moral development, much of his argument about how persons in the original position arrive at the principles of justice is expressed in terms of mutual disinterest and rationality—the language of rational choice. This, I contend, leaves what he says unnecessarily open to three criticisms: it involves unacceptably egoistic and individualistic assumptions about human nature; taking an “outside” perspective, it is of little or no relevance to actual people thinking about justice; and its aim to create universalistic and impartial principles leads to the neglect of “otherness” or difference.³ I think all three

criticisms are mistaken, but they result at least in part from Rawls's tendency to use the language of rational choice.

In my view, the original position and what happens there are described far better in other terms. As Rawls himself says, the combination of conditions he imposes on them “forces each person in the original position to take the good of others into account.”⁴ The parties can be presented as the “rational, mutually disinterested” agents characteristic of rational choice theory only because they do not know *which* self they will turn out to be. The veil of ignorance is such a demanding stipulation that it converts what would, without it, be self-interest into equal concern for others, including others who are very different from ourselves. Those in the original position cannot think from the position of *nobody*, as is suggested by those critics who then conclude that Rawls's theory depends upon a “disembodied” concept of the self. They must, rather, think from the perspective of *everybody*, in the sense of *each in turn*. To do this requires, at the very least, both strong empathy and a preparedness to listen carefully to the very different points of view of others. As I have suggested, these capacities seem more likely to be widely distributed in a society of just families, with no expectations about or reinforcements of gender.

Rawls's Theory of Justice as a Tool for Feminist Criticism

The significance of Rawls's central, brilliant idea, the original position, is that it forces one to question and consider traditions, customs, and institutions from all points of view, and ensures that the principles of justice will be acceptable to everyone, regardless of what position “he” ends up in. The critical force of the original position becomes evident when one considers that some of the most creative critiques of Rawls's theory have resulted from more radical or broad interpretations of the original position than his own.⁵ The

1 *If both ... of justice?* On the connections among nurturing, empathy, and gender, see, for example, Judith Kegan Gardiner, “Self Psychology as Feminist Theory,” *Signs* 12, no. 4 (1987), esp. 771 and 778–80; Sara Ruddick, “Maternal Thinking,” *Feminist Studies* 6, no. 2 (1980).

2 *This reading ... made of it* See Okin, “Reason and Feeling,” for the more detailed argument from which this and the following paragraph are summarized.

3 *This, I contend ... “otherness” or difference* Thomas Nagel, “Rawls on Justice,” in *Reading Rawls*, ed. Norman Daniels (New York: Basic Books, 1974) (reprinted from *Philosophical Review* 72 [1973]), makes the first argument. Michael J. Sandel, *Liberalism and the Limits of Justice* (Cambridge: Cambridge University Press, 1982), makes the first two arguments. The second argument is made by both Alasdair MacIntyre, in *After Virtue* (Notre Dame: University of Notre Dame Press, 1981), for example, pp. 119 and 233, and Michael Walzer, in *Spheres of Justice* (New York: Basic Books, 1983), pp. xiv and 5, and *Interpretation and Social Criticism* (Cambridge: Harvard University Press, 1987), pp. 11–16. The third argument, though related to some of the objections raised by Sandel and Walzer, is primarily made by feminist critics, notably Seyla Benhabib, in “The Generalized and the Concrete Other,” in *Feminism as Critique*, ed. Benhabib and Drucilla Cornell (Minneapolis: University of Minnesota Press, 1987); and Iris Marion Young, in “Toward a

Critical Theory of Justice,” *Social Theory and Practice* 7 (1981), and “Impartiality and the Civic Public,” in *Feminism as Critique*. The second and third objections are combined in Carole Pateman's claim that “Rawls's original position is a logical abstraction of such rigor that nothing happens there” (*The Sexual Contract* [Stanford: Stanford University Press, 1988], p. 43).

4 *forces each person ... into account* Rawls, *Theory*, p. 148.

5 *more radical or broad interpretations of the original position than his own* Charles Beitz, for example, argues that there is no justification for not extending its application to the population of the entire world, which would lead to challenging virtually everything that is currently assumed in the dominant “statist” conception of

theory, in principle, avoids both the problem of domination that is inherent in theories of justice based on traditions or shared understandings and the partiality of libertarian theory to those who are talented or fortunate. For feminist readers, however, the problem of the theory as stated by Rawls himself is encapsulated in that ambiguous "he." As I have shown, while Rawls briefly rules out formal, legal discrimination on the grounds of sex (as on other grounds that he regards as "morally irrelevant"), he fails entirely to address the justice of the gender system, which, with its roots in the sex roles of the family and its branches extending into virtually every corner of our lives, is one of the fundamental structures of our society. If, however, we read Rawls in such a way as to take seriously both the notion that those behind the veil of ignorance do not know what sex they are and the requirement that the family and the gender system, as basic social institutions, are to be subject to scrutiny, constructive feminist criticism of these contemporary institutions follows. So, also, do hidden difficulties for the application of a Rawlsian theory of justice in a gendered society.

I shall explain each of these points in turn. But first, both the critical perspective and the incipient problems of a feminist reading of Rawls can perhaps be illuminated by a description of a cartoon I saw a few years ago. Three elderly, robed male justices are depicted, looking down with astonishment at their very pregnant bellies. One says to the others, without further elaboration: "Perhaps we'd better reconsider that decision." This illustration graphically demonstrates the importance, in thinking about justice, of a concept like Rawls's original position, which makes us adopt the positions of others—especially positions that we ourselves could never be in. It also suggests that those thinking in such a way might well conclude that more than formal legal equality of the sexes is required if justice is to be done. As we have seen in recent years, it is quite possible to enact and uphold "gender-neutral" laws concerning pregnancy, abortion, childbirth leave, and so on that in effect discriminate against women: The United States Supreme Court decided in 1976, for example, that "an exclusion of pregnancy from a disability-benefits plan providing general coverage is not a gender-based discrimination at all."¹ One of the virtues of the cartoon is its suggestion that one's thinking on such matters is likely to be affected by the knowledge that one

might become "a pregnant person." The illustration also points out the limits of what is possible, in terms of thinking ourselves into the original position, as long as we live in a gender-structured society. While the elderly male justices can, in a sense, imagine themselves as pregnant, what is a much more difficult question is whether, in order to construct principles of justice, they can imagine themselves as women. This raises the question of whether, in fact, sex is a morally irrelevant and contingent characteristic in a society structured by gender.

Let us first assume that sex is contingent in this way, though I shall later question this assumption. Let us suppose that it is possible, as Rawls clearly considers it to be, to hypothesize the moral thinking of representative human beings, as ignorant of their sex as of all the other things hidden by the veil of ignorance. It seems clear that, while Rawls does not do this, we must consistently take the relevant positions of both sexes into account in formulating and applying principles of justice. In particular, those in the original position must take special account of the perspective of women, since their knowledge of "the general facts about human society" must include the knowledge that women have been and continue to be the less advantaged sex in a great number of respects. In considering the basic institutions of society, they are more likely to pay special attention to the family than virtually to ignore it. Not only is it potentially the first school of social justice, but its customary unequal assignment of responsibilities and privileges to the two sexes and its socialization of children into sex roles make it, in its current form, an institution of crucial importance for the perpetuation of sex inequality.

In innumerable ways, the principles of justice that Rawls arrives at are inconsistent with a gender-structured society and with traditional family roles. The critical impact of a feminist application of Rawls's theory comes chiefly from his second principle, which requires that inequalities be both "to the greatest benefit of the least advantaged" and "attached to offices and positions open to all."² This means that if any roles or positions analogous to our current sex roles—including those of husband and wife, mother and father—were to survive the demands of the first requirement, the second requirement would prohibit any linkage between these roles and sex. Gender, with its ascriptive designation of positions and expectations of behavior in accordance with the inborn characteristic of sex, could no

international relations (*Political Theory and International Relations* [Princeton: Princeton University Press, 1979]).
 1 an exclusion ... at all See *General Electric v. Gilbert*, 429 U.S. 125 (1976), p. 136.

2 to the greatest ... open to all Rawls, *Theory*, p. 302.

longer form a legitimate part of the social structure, whether inside or outside the family. Three illustrations will help to link this conclusion with specific major requirements that Rawls makes of a just or well-ordered society.

First, after the basic political liberties, one of the most essential liberties is "the important liberty of free choice of occupation."¹ It is not difficult to see that this liberty is compromised by the assumption and customary expectation, central to our gender system, that women take far greater responsibility for housework and child care, whether or not they also work for wages outside the home. In fact, both the assignment of these responsibilities to women—resulting in their asymmetric economic dependence on men—and the related responsibility of husbands to support their wives compromise the liberty of choice of occupation of both sexes. But the customary roles of the two sexes inhibit women's choices over the course of a lifetime far more severely than those of men; it is far easier in practice to switch from being a wage worker to occupying a domestic role than to do the reverse. While Rawls has no objection to some aspects of the division of labor, he asserts that, in a well-ordered society, "no one need be servilely dependent on others and made to choose between monotonous and routine occupations which are deadening to human thought and sensibility" and that work will be "meaningful for all."² These conditions are far more likely to be met in a society that does not assign family responsibilities in a way that makes women into a marginal sector of the paid work force and renders likely their economic dependence upon men. Rawls's principles of justice, then, would seem to require a radical rethinking not only of the division of labor within families but also of all the nonfamily institutions that assume it.

Second, the abolition of gender seems essential for the fulfillment of Rawls's criterion for political justice. For he argues that not only would equal formal political liberties be espoused by those in the original position, but that any inequalities in the *worth* of these liberties (for example, the effects on them of factors like poverty and ignorance) must be justified by the difference principle. Indeed, "the constitutional process should preserve the equal representation of the original position to the degree that this is practicable."³ While Rawls discusses this requirement in the context of

class differences, stating that those who devote themselves to politics should be "drawn more or less equally from all sectors of society,"⁴ it is just as clearly and importantly applicable to sex differences. The equal political representation of women and men, especially if they are parents, is clearly inconsistent with our gender system. The paltry number of women in high political office is an obvious indication of this. Since 1789, over 10,000 men have served in the United States House of Representatives, but only 107 women; some 1,140 men have been senators, compared with 15 women. Only one recent appointee, Sandra Day O'Connor, has ever served on the Supreme Court. These levels of representation of any other class constituting more than a majority of the population would surely be perceived as a sign that something is grievously wrong with the political system. But as British politician Shirley Williams recently said, until there is "a revolution in shared responsibilities for the family, in child care and in child rearing," there will not be "more than a very small number of women ... opting for a job as demanding as politics."⁵

Finally, Rawls argues that the rational moral persons in the original position would place a great deal of emphasis on the securing of self-respect or self-esteem. They "would wish to avoid at almost any cost the social conditions that undermine self-respect," which is "perhaps the most important" of all the primary goods.⁶ In the interests of this primary value, if those in the original position did not know whether they were to be men or women, they would surely be concerned to establish a thoroughgoing social and economic equality between the sexes that would protect either sex from the need to pander to or servilely provide for the pleasures of the other. They would emphasize the importance of girls' and boys' growing up with an equal sense of respect for themselves and equal expectations of self-definition and development. They would be highly motivated, too, to find a means of regulating pornography that did not seriously compromise freedom of speech. In general,

4 *drawn more or less ... sectors of society* Ibid., p. 228.

5 *a revolution ... as politics* Elizabeth Holtzman and Shirley Williams, "Women in the Political World: Observations," *Daedalus* 116, no. 4 (Fall 1987). The statistics cited here are also from this article. Despite superficial appearances, the situation is no different in Great Britain. As of 1987, 41 out of the 630 members of the British House of Commons were women, and Margaret Thatcher is far more of an anomaly among British prime ministers than the few reigning queens have been among British monarchs.

6 *would wish ... primary goods* Rawls, *Theory*, pp. 440, 396; see also pp. 178-79.

1 *the important liberty ... of occupation* Ibid., p. 274.

2 *no one ... meaningful for all* Ibid., p. 529.

3 *the constitutional process ... this is practicable* Ibid., p. 222; see also pp. 202-05, 221-28.

they would be unlikely to tolerate basic social institutions that asymmetrically either forced or gave strong incentives to members of one sex to serve as sex objects for the other.

There is, then, implicit in Rawls's theory of justice a potential critique of gender-structured social institutions, which can be developed by taking seriously the fact that those formulating the principles of justice do not know their sex. At the beginning of my brief account of this feminist critique, however, I made an assumption that I said would later be questioned—that a person's sex is, as Rawls at times indicates, a contingent and morally irrelevant characteristic, such that human beings really can hypothesize ignorance of this fact about them. First, I shall explain why, unless this assumption is a reasonable one, there are likely to be further feminist ramifications for a Rawlsian theory of justice, in addition to those I have just sketched out. I shall then argue that the assumption is very probably not plausible in any society that is structured along the lines of gender. I reach the conclusions not only that our current gender structure is incompatible with the attainment of social justice, but also that the disappearance of gender is a prerequisite for the *complete* development of a nonsexist, fully human theory of justice.

Although Rawls is clearly aware of the effects on individuals of their different places in the social system, he regards it as possible to hypothesize free and rational moral persons in the original position who, temporarily freed from the contingencies of actual characteristics and social circumstances, will adopt the viewpoint of the "representative" human being. He is under no illusions about the difficulty of this task: it requires a "great shift in perspective" from the way we think about fairness in everyday life. But with the help of the veil of ignorance, he believes that we can "take up a point of view that everyone can adopt on an equal footing," so that "we share a common standpoint along with others and do not make our judgments from a personal slant." The result of this rational impartiality or objectivity, Rawls argues, is that, all being convinced by the same arguments, agreement about the basic principles of justice will be unanimous. He does not mean that those in the original position will agree about *all* moral or social issues—"ethical differences are bound to remain"—but that complete agreement will be reached on all basic principles, or "essential understandings." A critical assumption of this argument for unanimity, however, is that all the parties have similar motivations and psychologies (for example, he assumes mutually disinterested rationality and an absence

of envy) and have experienced similar patterns of moral development, and are thus presumed capable of a sense of justice. Rawls regards these assumptions as the kind of "weak stipulations" on which a general theory can safely be founded.¹

The coherence of Rawls's hypothetical original position, with its unanimity of representative human beings, however, is placed in doubt if the kinds of human beings we actually become in society differ not only in respect to interests, superficial opinions, prejudices, and points of view that we can discard for the purpose of formulating principles of justice, but also in their basic psychologies, conceptions of the self in relation to others, and experiences of moral development. A number of feminist theorists have argued in recent years that, in a gender-structured society, the different life experiences of females and males from the start in fact affect their respective psychologies, modes of thinking, and patterns of moral development in significant ways.² Special attention has been paid to the effects on the psychological and moral development of both sexes of the fact, fundamental to our gendered society, that children of both sexes are reared primarily by women. It has been argued that the experience of individuation—of separating oneself from the nurturer with whom one is originally psychologically fused—is a very different experience for girls than for boys, leaving the members of each sex with a different perception of themselves and of their relations

¹ *Rawls regards ... be founded* Rawls, "Kantian Constructivism," p. 551; *Theory*, pp. 516–17, 139–41, 149.

² *A number ... significant ways* Major books contributing to this thesis are Jean Baker Miller, *Toward a New Psychology of Women* (Boston: Beacon Press, 1976); Dorothy Dinnerstein, *The Mermaid and the Minotaur* (New York: Harper & Row, 1977); Nancy Chodorow, *The Reproduction of Mothering* (Berkeley: University of California Press, 1978); Carol Gilligan, *In a Different Voice* (Cambridge: Harvard University Press, 1982); Nancy Hartsock, *Money, Sex, and Power* (New York: Longman, 1983). Some of the more important individual papers are Jane Flax, "The Conflict Between Nurturance and Autonomy in Mother-Daughter Relationships and Within Feminism," *Feminist Studies* 4, no. 2 (Summer 1978); Judith Kegan Gardiner, "Self Psychology"; and Sara Ruddick, "Maternal Thinking." Summaries and/or analyses are presented in Jean Grimshaw, *Philosophy and Feminist Thinking* (Minneapolis: University of Minnesota Press, 1986), chaps. 5–8; Alison Jaggar, *Feminist Politics and Human Nature* (Totowa, N.J.: Rowman and Allanheld, 1983), chap. 11; Susan Moller Okin, "Thinking Like a Woman," in *Theoretical Perspectives on Sexual Difference*, ed. Deborah Rhode (New Haven: Yale University Press, forthcoming); Joan Tronto, "'Women's Morality': Beyond Gender Difference to a Theory of Care," *Signs* 12, no. 4 (Summer 1987).

with others.¹ In addition, it has been argued that the experience of *being* primary nurturers (and of growing up with this expectation) also affects the psychological and moral perspective of women, as does the experience of growing up in a society in which members of one's sex are in many ways subordinate to the other sex. Feminist theorists have scrutinized and analyzed the different experiences we encounter as we develop, from our actual lived lives to our absorption of their ideological underpinnings, and have filled out in valuable ways Simone de Beauvoir's claim that "one is not born, but rather becomes, a woman."²

What seems already to be indicated by these studies, despite their incompleteness so far, is that *in a gender-structured society* there is such a thing as the distinct standpoint of women, and that this standpoint cannot be adequately taken into account by male philosophers doing the theoretical equivalent of the elderly male justices depicted in the cartoon. The formative influence of female parenting on small children, especially, seems to suggest that sex difference is even more likely to affect one's thinking about justice in a gendered society than, for example, racial difference in a society in which race has social significance, or class difference in a class society. The notion of the standpoint of women, while not without its own problems, suggests that a fully human moral or political theory can be developed only with the full participation of both sexes. At the very least, this will require that women take their place with men in the dialogue in approximately equal numbers and in positions of comparable influence. In a society structured along the lines of gender, this cannot happen.

In itself, moreover, it is insufficient for the development of a fully human theory of justice. For if principles of justice are to be adopted unanimously by representative human beings ignorant of their particular characteristics and positions in society, they must be persons whose psychological and moral development is in all essentials identical. This means that the social factors influencing the differences presently found between the sexes—from female parenting to all the manifestations of female subordination and dependence—would have to be replaced by genderless institutions and customs. Only children who are equally mothered

and fathered can develop fully the psychological and moral capacities that currently seem to be unevenly distributed between the sexes. Only when men participate equally in what have been principally women's realms of meeting the daily material and psychological needs of those close to them, and when women participate equally in what have been principally men's realms of larger scale production, government, and intellectual and artistic life, will members of both sexes be able to develop a more complete *human* personality than has hitherto been possible. Whereas Rawls and most other philosophers have assumed that human psychology, rationality, moral development, and other capacities are completely represented by the males of the species, this assumption itself has now been exposed as part of the male-dominated ideology of our gendered society.

What effect might consideration of the standpoint of women in gendered society have on Rawls's theory of justice? It would place in doubt some assumptions and conclusions, while reinforcing others. For example, the discussion of rational plans of life and primary goods might be focused more on relationships and less exclusively on the complex activities that he values most highly, if it were to take account of, rather than to take for granted, the traditionally more female contributions to human life.³ Rawls says that self-respect or self-esteem is "perhaps the most important primary good," and that "the parties in the original position would wish to avoid at almost any cost the social conditions that undermine [it]."⁴ Good early physical and especially psychological nurturance in a favorable setting is essential for a child to develop self-respect or self-esteem. Yet there is no discussion of this in Rawls's consideration of the primary goods. Since the basis of self-respect is formed in very early childhood, just family structures and practices in which it is fostered and in which parenting itself is esteemed, and high-quality, subsidized child care facilities to supplement them, would surely be fundamental requirements of a just society. On the other hand, as I indicated earlier, those aspects of Rawls's theory, such as the difference principle, that

1 It has been argued ... *relations with others* This thesis, developed by Nancy Chodorow on the basis of psychoanalytic object-relations theory, is explained in more detail in chapter 6 of *Justice*

3 the discussion ... *human life* Brian Barry has made a similar, though more general, criticism of Rawls's focus on the value of the complexity of activities (the "Aristotelian principle") in *The Liberal Theory of Justice* (Oxford: Oxford University Press, 1973), pp. 27-30. Rawls leaves room for such criticism and adaptation of his theory of primary goods when he says that it "depends upon

require a considerable capacity to identify with others, can be strengthened by reference to conceptions of relations between self and others that seem in gendered society to be more predominantly female, but that would in a gender-free society be more or less evenly shared by members of both sexes.

The arguments of this chapter have led to mixed conclusions about the potential usefulness of Rawls's theory of justice from a feminist viewpoint, and about its adaptability to a genderless society. Rawls himself neglects gender and, despite his initial statement about the place of the family in the basic structure, does not consider whether or in what form the family is a just institution. It seems significant, too, that whereas at the beginning of *A Theory of Justice* he explicitly distinguishes the institutions of the basic structure (including the family) from other "private associations" and "various informal conventions and customs of everyday life," in his most recent work he distinctly reinforces the impression that the family belongs with those "private" and therefore nonpolitical associations, for which he suggests the principles of justice are less appropriate or relevant.¹ He does this, moreover, despite the fact that his own theory of moral development rests centrally on the early experience of persons within a family environment that is both loving and just. Thus the theory as it stands contains an internal paradox. Because of his assumptions about gender, he has not applied the principles of justice to the realm of human nurturance, a realm that is essential to the achievement and the maintenance of justice.

On the other hand, I have argued that the feminist *potential* of Rawls's method of thinking and his conclusions is considerable. The original position, with the veil of ignorance hiding from its participants their sex as well as their other particular characteristics, talents, circumstances, and aims, is a powerful concept for challenging the gender structure. Once we dispense with the traditional liberal assumptions about public versus domestic, political versus nonpolitical spheres of life, we can use Rawls's theory as a

tool with which to think about how to achieve justice between the sexes both within the family and in society at large.

Chapter 8: Conclusion: Toward a Humanist Justice

The family is the linchpin of gender, reproducing it from one generation to the next. As we have seen, family life as typically practiced in our society is not just, either to women or to children. Moreover, it is not conducive to the rearing of citizens with a strong sense of justice. In spite of all the rhetoric about equality between the sexes, the traditional or quasi-traditional division of family labor still prevails. Women are made vulnerable by constructing their lives around the expectation that they will be primary parents; they become more vulnerable within marriages in which they fulfill this expectation, whether or not they also work for wages; and they are most vulnerable in the event of separation or divorce, when they usually take over responsibility for children without adequate support from their ex-husbands. Since approximately half of all marriages end in divorce, about half of our children are likely to experience its dislocations, often made far more traumatic by the socioeconomic consequences of both gender-structured marriage and divorce settlements that fail to take account of it. I have suggested that, for very important reasons, the family *needs* to be a just institution, and have shown that contemporary theories of justice neglect women and ignore gender. How can we address this injustice?

This is a complex question. It is particularly so because we place great value on our freedom to live different kinds of lives, there is no current consensus on many aspects of gender, and we have good reason to suspect that many of our beliefs about sexual difference and appropriate sex roles are heavily influenced by the very fact that we grew up in a gender-structured society. All of us have been affected, in our very psychological structures, by the fact of gender in our personal pasts, just as our society has been deeply affected by its strong influence in our collective past. Because of the lack of shared meanings about gender, it constitutes a particularly hard case for those who care deeply about both personal freedom and social justice. The way we divide the labor and responsibilities in our personal lives seems to be one of those things that people should be free to work out for themselves, but because of its vast repercussions it belongs clearly within the scope of things

¹ *in his most ... appropriate or relevant* Ibid., p. 8. The more recent development is connected with Rawls's endorsement of the public/private dichotomy in Charles Larmore, *Patterns of Moral Complexity* (Cambridge: Cambridge University Press, 1987). Rawls most explicitly indicates that the family belongs in the "private" sphere, to which the principles of justice are not intended to apply, in "Justice as Fairness: Political Not Metaphysical," p. 245 n.27, and in "The Priority of Right and Ideas of the Good," *Philosophy and Public Affairs* 17, no. 4 (1988): esp. 263.

that must be governed by principles of justice. Which is to say, in the language of political and moral theory, that it belongs both to the sphere of "the good" and to that of "the right."

I shall argue here that 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. We must work toward a future in which all will be likely to choose this mode of life. A just future would be one without gender. In its social structures and practices, one's sex would have no more relevance than one's eye color or the length of one's toes. No assumptions would be made about "male" and "female" roles; childbearing would be so conceptually separated from child rearing and other family responsibilities that it would be a cause for surprise, and no little concern, if men and women were not equally responsible for domestic life or if children were to spend much more time with one parent than the other. It would be a future in which men and women participated in more or less equal numbers in every sphere of life, from infant care to different kinds of paid work to high-level politics. Thus it would no longer be the case that having no experience of raising children would be the practical prerequisite for attaining positions of the greatest social influence. Decisions about abortion and rape, about divorce settlements and sexual harassment, or about any other crucial social issues would not be made, as they often are now, by legislatures and benches of judges overwhelmingly populated by men whose power is in large part due to their advantaged position in the gender structure. If we are to be at all true to our democratic ideals, moving away from gender is essential. Obviously, the attainment of such a social world requires major changes in a multitude of institutions and social settings outside the home, as well as within it.

Such changes will not happen overnight. Moreover, any present solution to the vulnerability of women and children that is just and respects individual freedom must take into account that most people currently live in ways that are greatly affected by gender, and most still favor many aspects of current, gendered practices. Sociological studies confirm what most of us already infer from our own personal and professional acquaintances: there are no currently shared meanings in this country about the extent to which differences between the sexes are innate or environmental,

cial for partners, parents, and children.¹ There are those, at one extreme, for whom the different roles of the two sexes, especially as parents, are deeply held tenets of religious belief. At the other end of the spectrum are those of us for whom the sooner all social differentiation between the sexes vanishes, the better it will be for all of us. And there are a thousand varieties of view in between. Public policies must respect people's views and choices. But they must do so only insofar as it can be ensured that these choices do not result, as they now do, in the vulnerability of women and children. Special protections must be built into our laws and public policies to ensure that, for those who choose it, the division of labor between the sexes does not result in injustice. In the face of these difficulties—balancing freedom and the effects of past choices against the needs of justice—I do not pretend to have arrived at any complete or fully satisfactory answers. But I shall attempt in this final chapter to suggest some social reforms, including changes in public policies and reforms of family law, that may help us work toward a solution to the injustices of gender.

Marriage has become an increasingly peculiar contract, a complex and ambiguous combination of anachronism and present-day reality. There is no longer the kind of agreement that once prevailed about what is expected of the parties to a marriage. Clearly, at least in the United States, it is no longer reasonable to assume that marriage will last a lifetime, since only half of current marriages are expected to. And yet, in spite of the increasing legal equality of men and women and the highly publicized figures about married women's increased participation in the labor force, many couples continue to adhere to more or less traditional patterns of role differentiation. As a recent article put it, women are "out of the house but not out of the kitchen."² Consequently, often working part-time or taking time out from wage work to care for family members, especially children, most wives are in a very different position from their husbands in their ability to be economically self-supporting. This is reflected, as we have seen, in power differentials between the sexes within the family. It means also, in the increasingly common event of divorce, usually by mutual agreement, that it is the mother who in 90 percent of cases will have physical custody of the children. But whereas

1 *Sociological studies ... parents, and children* See Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books,

the greater need for money goes one way, the bulk of the earning power almost always goes the other. This is one of the most important causes of the feminization of poverty, which is affecting the life chances of ever larger numbers of children as well as their mothers. The division of labor within families has always adversely affected women, by making them economically dependent on men. Because of the increasing instability of marriage, its effects on children have now reached crisis proportions.

Some who are critical of the present structure and practices of marriage have suggested that men and women simply be made free to make their own agreements about family life, contracting with each other, much as business contracts are made.¹ But this takes insufficient account of the history of gender in our culture and our own psychologies, of the present substantive inequalities between the sexes, and, most important, of the well-being of the children who result from the relationship. As has long been recognized in the realm of labor relations, justice is by no means always enhanced by the maximization of freedom of contract, if the individuals involved are in unequal positions to start with. Some have even suggested that it is consistent with justice to leave spouses to work out their own divorce settlement.² By this time, however, the two people ending a marriage are likely to be far *more* unequal. Such a practice would be even more catastrophic for most women and children than is the present system. Wives in any but the rare cases in which they as individuals have remained their husbands' socioeconomic equals could hardly be expected to reach a just solution if left "free" to "bargain" the terms of financial support or child custody. What would they have to bargain *with*?

There are many directions that public policy can and should take in order to make relations between men and women more just. In discussing these, I shall look back to some of the contemporary ways of thinking about justice that I find most convincing. I draw particularly on Rawls's idea of the original position and Walzer's conception of

the complex equality found in separate spheres of justice, between which I find no inconsistency. I also keep in mind critical legal theorists' critique of contract, and the related idea, suggested earlier, that rights to privacy that are to be valuable to all of us can be enjoyed only insofar as the sphere of life in which we enjoy them ensures the equality of its adult members and protects children. Let us begin by asking what kind of arrangements persons in a Rawlsian original position would agree to regarding marriage, parental and other domestic responsibilities, and divorce. What kinds of policies would they agree to for other aspects of social life, such as the workplace and schools, that affect men, women, and children and relations among them? And let us consider whether these arrangements would satisfy Walzer's separate spheres test—that inequalities in one sphere of life not be allowed to overflow into another. Will they foster equality within the sphere of family life? For the protection of the privacy of a domestic sphere in which inequality exists is the protection of the right of the strong to exploit and abuse the weak.

Let us first try to imagine ourselves, as far as possible, in the original position, knowing neither what our sex nor any other of our personal characteristics will be once the veil of ignorance is lifted.³ Neither do we know our place in society or our particular conception of the good life. Particularly relevant in this context, of course, is our lack of knowledge of our beliefs about the characteristics of men and women and our related convictions about the appropriate division of labor between the sexes. Thus the positions we represent must include a wide variety of beliefs on these matters. We may, once the veil of ignorance is lifted, find ourselves feminist men or feminist women whose conception of the good life includes the minimization of social differentiation between the sexes. Or we may find ourselves traditionalist men or women, whose conception of the good life, for religious or other reasons, is bound up in an adherence to the conventional division of labor between the sexes. The challenge is to arrive at and apply principles of justice having to do with the family and the division of labor between the sexes that can satisfy these vastly disparate points of view and the many that fall between.

1 *Some who ... contracts are made* See, for example, Marjorie McGuire Schultz, "Contractual Ordering of Marriage: A New Model for State Policy," *California Law Review* 70, no. 2 (1982); Lenore Weitzman, *The Marriage Contract: Spouses, Lovers, and the Law* (New York: The Free Press, 1981), parts 3-4.

2 *Some have ... divorce settlement* See, for example, David L. Kirp, Mark G. Yudof, and Marlene Strong Franks, *Gender Justice* (Chicago: University of Chicago Press, 1986), pp. 183-85. Robert H. Mnookin takes an only slightly less laissez-faire approach, in "Divorce Bargaining: The Limits on Private Ordering," *University of Michigan Journal of Law Reform* 18, no. 4 (1985).

3 *Let us first ... is lifted* I say "as far as possible" because of the difficulties already pointed out in chapter 5. Given the deep effects of gender on our psychologies, 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. Nevertheless, this should not prevent us from trying.

There are some traditionalist positions so extreme that they ought not be admitted for consideration, since they violate such fundamentals as equal basic liberty and self-respect. We need not, and should not, that is to say, admit for consideration views based on the notion that women are inherently inferior beings whose function is to fulfill the needs of men. Such a view is no more admissible in the construction of just institutions for a modern pluralist society than is the view, however deeply held, that some are naturally slaves and others naturally and justifiably their masters. We need not, therefore, consider approaches to marriage that view it as an inherently and desirably hierarchical structure of dominance and subordination. Even if it were conceivable that a person who did not know whether he or she would turn out to be a man or a woman in the society being planned would subscribe to such views, they are not admissible. Even if there were no other reasons to refuse to admit such views, they must be excluded for the sake of children, for everyone in the original position has a high personal stake in the quality of childhood. Marriages of dominance and submission are bad for children as well as for their mothers, and the socioeconomic outcome of divorce after such a marriage is very likely to damage their lives and seriously restrict their opportunities.

With this proviso, what social structures and public policies regarding relations between the sexes, and the family in particular, could we agree on in the original position? I think we would arrive at a basic model that would absolutely minimize gender. I shall first give an account of some of what this would consist in. We would also, however, build in carefully protective institutions for those who wished to follow gender-structured modes of life. These too I shall try to spell out in some detail.

Moving Away from Gender

First, public policies and laws should generally assume no social differentiation of the sexes. Shared parental responsibility for child care would be both assumed and facilitated. Few people outside of feminist circles seem willing to acknowledge that society does not have to choose between a system of female parenting that renders women and children seriously vulnerable and a system of total reliance on day care provided outside the home. While high-quality day care, subsidized so as to be equally available to all children, certainly constitutes an important part of the response that society should make in order to provide justice for women

and children, it is only one part.¹ If we start out with the reasonable assumption that women and men are equally parents of their children, and have equal responsibility for both the unpaid effort that goes into caring for them and their economic support, then we must rethink the demands of work life throughout the period in which a worker of either sex is a parent of a small child. We can no longer cling to the by now largely mythical assumption that every worker has "someone else" at home to raise "his" children.

The facilitation and encouragement of equally shared parenting would require substantial changes.² It would

1 *While high-quality ... one part* It seems reasonable to conclude that the effects of day care on children are probably just as variable as the effects of parenting—that is to say, very widely variable depending on the quality of the day care and of the parenting. There is no doubt that good out-of-home day care is expensive—approximately \$100 per full-time week in 1987, even though child-care workers are now paid only about two-thirds as much per hour as other comparably educated women workers (Victor Fuchs, *Women's Quest for Economic Equality* [Cambridge: Harvard University Press, 1988], pp. 137-38). However, it is undoubtedly easier to control its quality than that of informal "family day care." In my view, based in part on my experience of the excellent day-care center that our children attended for a total of seven years, good-quality day care must have small-scale "home rooms" and a high staff-to-child ratio, and should pay staff better than most centers now do. For balanced studies of the effects of day care on a poor population, see Sally Provence, Audrey Naylor, and June Patterson, *The Challenge of Daycare* (New Haven: Yale University Press, 1977); and, most recently, Lisbeth B. Schorr (with Daniel Schorr), *Within Our Reach—Breaking the Cycle of Disadvantage* (New York: Anchor Press, Doubleday, 1988), chap. 8.

2 *The facilitation ... substantial changes* Much of what I suggest here is not new; it has formed part of the feminist agenda for several decades, and I first made some of the suggestions I develop here in the concluding chapter of *Women in Western Political Thought* (Princeton: Princeton University Press, 1979). Three recent books that address some of the policies discussed here are Fuchs, *Women's Quest*, chap. 7; Philip Green, *Retrieving Democracy: In Search of Civic Equality* (Totowa, N.J.: Rowman and Allanheld, 1985), pp. 96-108; and Anita Shreve, *Remaking Motherhood: How Working Mothers Are Shaping Our Children's Future* (New York: Fawcett Columbine, 1987), pp. 173-78. In Fuchs's chapter he carefully analyzes the potential economic and social effects of alternative policies to improve women's economic status, and concludes that "child-centered policies" such as parental leave and subsidized day care are likely to have more of a positive impact on women's economic position than "labor market policies" such as antidiscrimination, comparable pay for comparable worth, and affirmative action have had and are likely to have. Some potentially very effective policies, such as on-site day care and flexible and/or reduced working hours for parents of young or "special needs" children, seem to fall within both of his categories.

mean major changes in the workplace, all of which could be provided on an entirely (and not falsely) gender-neutral basis. Employers must be required by law not only completely to eradicate sex discrimination, including sexual harassment. They should also be required to make positive provision for the fact that most workers, for differing lengths of time in their working lives, are also parents, and are sometimes required to nurture other family members, such as their own aging parents. Because children are borne by women but can (and, I contend, should) be raised by both parents equally, policies relating to pregnancy and birth should be quite distinct from those relating to parenting. Pregnancy and childbirth, to whatever varying extent they require leave from work, should be regarded as temporarily disabling conditions like any others, and employers should be mandated to provide leave for all such conditions.¹ Of course, pregnancy and childbirth are far *more* than simply "disabling conditions," but they should be treated as such for leave purposes, in part because their disabling effects vary from one woman to another. It seems unfair to mandate, say, eight or more weeks of leave for a condition that disables many women for less time and some for much longer, while *not* mandating leave for illnesses or other disabling conditions. Surely a society as rich as ours can afford to do both.

Parental leave during the postbirth months must be available to mothers and fathers on the same terms, to facilitate shared parenting; they might take sequential leaves or each might take half-time leave. All workers should have the right, without prejudice to their jobs, seniority, benefits, and so on, to work less than full-time during the first year of a child's life, and to work flexible or somewhat reduced hours at least until the child reaches the age of seven. Correspondingly greater flexibility of hours must be provided for the parents of a child with any health problem or dis-

abling condition. The professions whose greatest demands (such as tenure in academia or the partnership hurdle in law) coincide with the peak period of child rearing must restructure their demands or provide considerable flexibility for those of their workers who are also participating parents. Large-scale employers should also be required to provide high-quality on-site day care for children from infancy up to school age. And to ensure equal quality of day care for all young children, *direct government subsidies* (not tax credits, which benefit the better-off) should make up the difference between the cost of high-quality day care and what less well paid parents could reasonably be expected to pay.

There are a number of things that schools, too, must do to promote the minimization of gender. As Amy Gutmann has recently noted, in their present authority structures (84 percent of elementary school teachers are female, while 99 percent of school superintendents are male), "schools do not simply reflect, they perpetuate the social reality of gender preferences when they educate children in a system in which men rule women and women rule children." She argues that, since such sex stereotyping is "a formidable obstacle" to children's rational deliberation about the lives they wish to lead, sex should be regarded as a relevant qualification in the hiring of both teachers and administrators, until these proportions have become much more equal.²

An equally important role of our schools must be to ensure in the course of children's education that they become fully aware of the politics of gender. This does not only mean ensuring that women's experience and women's writing are included in the curriculum, although this in itself is undoubtedly important.³ Its political significance has become obvious from the amount of protest that it has provoked. Children need also 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. They should be discouraged from thinking about their futures as *determined* by the sex to which they

1. *Pregnancy and childbirth ... all such conditions* The dilemma faced by feminists in the recent California case *Guerra v. California Federal Savings and Loan Association*, 107 S. Ct. 683 (1987) was due to the fact that state law mandated leave for pregnancy and birth that it did *not* mandate for other disabling conditions. Thus to defend the law seemed to open up the dangers of discrimination that the earlier protection of women in the workplace had resulted in. (For a discussion of this general issue of equality versus difference, see, for example, Wendy W. Williams, "The Equality Crisis: Some Reflections on Culture, Courts, and Feminism," *Women's Rights Law Reporter* 7, no. 3 [1982].) The Supreme Court upheld the California law on the grounds that it treated workers equally in terms of their rights to become parents.

2. *As Amy Gutmann ... more equal* Amy Gutmann, *Democratic Education* (Princeton: Princeton University Press, 1987), pp. 112-15; quotation from pp. 113-14. See also Elisabeth Hansot and David Tyack, "Gender in American Public Schools: Thinking Institutionally," *Signs* 13, no. 4 (1988).

3. *An equally important ... undoubtedly important* A classic text on this subject is Dale Spender, ed., *Men's Studies Modified: The Impact of Feminism on the Academic Disciplines* (Oxford: Pergamon Press, 1981).

happen to belong. For many children, of course, personal experience has already "brought home" the devastating effects of the traditional division of labor between the sexes. But they do not necessarily come away from this experience with positive ideas about how to structure their own future family lives differently. As Anita Shreve has recently suggested, "the old home-economics courses that used to teach girls how to cook and sew might give way to the new home economics: teaching girls and boys how to combine working and parenting."¹ Finally, schools should be required to provide high-quality after-school programs, where children can play safely, do their homework, or participate in creative activities.

The implementation of all these policies would significantly help parents to share the earning and the domestic responsibilities of their families, and children to grow up prepared for a future in which the significance of sex difference is greatly diminished. Men could participate equally in the nurturance of their children, from infancy and throughout childhood, with predictably great effects on themselves, their wives or partners, and their children. And women need not become vulnerable through economic dependence. In addition, such arrangements would alleviate the qualms many people have about the long hours that some children spend in day care. If one parent of a preschooler worked, for example, from eight to four o'clock and the other from ten to six o'clock, a preschool child would be at day care for only six hours (including nap time), and with each one or both of her or his parents the rest of the day. If each parent were able to work a six-hour day, or a four-day week, still less day care would be needed. Moreover, on-site provision of day care would enable mothers to continue to nurse, if they chose, beyond the time of their parental leave.²

The situation of single parents and their children is more complicated, but it seems that it too, for a number of reasons, would be much improved in a society in which sex difference was accorded an absolute minimum of social significance. Let us begin by looking at the situation of never-married mothers and their children. First, the occurrence of

pregnancy among single teenagers, which is almost entirely unintended, would presumably be reduced if girls grew up more assertive and self-protective, and with less tendency to perceive their futures primarily in terms of motherhood. It could also be significantly reduced by the wide availability of sex education and contraception.³ Second, the added weight of responsibility given to fatherhood in a gender-free society would surely give young men more incentive than they now have not to incur the results of careless sexual behavior until they were ready to take on the responsibilities of being parents. David Ellwood has outlined a policy for establishing the paternity of all children of single mothers at the time of birth, and for enforcing the requirement that their fathers contribute to their support throughout childhood, with provision for governmental backup support in cases where the father is unable to pay. These proposals seem eminently fair and sensible, although the minimum levels of support suggested (\$1,500 to \$2,000 per year) are inadequate, especially since the mother is presumed to be either taking care of the child herself or paying for day care (which often costs far more than this) while she works.⁴

¹ *the old home-economics ... working and parenting* Shreve, *Remaking Motherhood* (New York: Viking, 1987), p. 237.

² *on-site provision ... parental leave* Although 51 percent of infants are breast-fed at birth, only 14 percent are entirely breast-fed at six weeks of age. Cited from P. Leach, *Babyhood* (New York: Alfred A. Knopf, 1983), by Sylvia Ann Hewlett, in *A Lesser Life: The Myth of Women's Liberation in America* (New York: Morrow, 1986), p. 409 n34. Given this fact, it seems quite unjustified to argue that lactation *dictates* that mothers be the primary parents, even during infancy.

³ *It could also ... and contraception* In Sweden, where the liberalization of abortion in the mid-1970s was accompanied by much expanded birth-control education and information and reduced-cost contraceptives, the rates of both teenage abortion and teenage birth decreased significantly. The Swedish teenage birthrate was by 1982 less than half what it had been in the 1970s. Mary Ann Glendon, *Abortion and Divorce in Western Law* (Cambridge: Harvard University Press, 1987), p. 23 and n65. Chapter 3 of Schorr's *Within Our Reach* gives an excellent account of programs in the United States that have proven effective in reducing early and unplanned pregnancies. Noting the strong correlation between emotional and economic deprivation and early pregnancy, she emphasizes the importance, if teenagers are to have the incentive not to become pregnant, of their believing that they have a real stake in their own futures, and developing the aspirations and self-assertiveness that go along with this. As Victor Fuchs points out, approximately two-thirds of unmarried women who give birth are twenty or older (*Women's Quest*, p. 68). However, these women are somewhat more likely to have work skills and experience, and it seems likely that many live in informal "common law marriage" heterosexual or lesbian partnerships, rather than being in *fact* single parents.

⁴ *David Ellwood ... she works* David Ellwood, *Poor Support: Poverty in the American Family* (New York: Basic Books, 1988), pp. 163-74. He estimates that full-time day care for each child can be bought for \$3,000 per year; and half-time for \$1,000. He acknowledges that these estimated costs are "modest." I think they are unrealistic, unless the care is being provided by a relative or close friend. Ellwood reports that, as of 1985, only 18 percent of never-married fathers were ordered to pay child support, and only 11 percent actually paid any (p. 158).

Third, never-married mothers would benefit greatly from a work structure that took parenthood seriously into account, as well as from the subsidization of high-quality day care. Women who grew up with the expectation that their work lives would be as important a part of their futures as the work lives of men would be less likely to enter dead-ended, low-skilled occupations, and would be better able to cope economically with parenthood without marriage.

Most single parenthood results, however, not from single mothers giving birth, but from marital separation and divorce. And this too would be significantly altered in a society not structured along the lines of gender. Even if rates of divorce were to remain unchanged (which is impossible to predict), it seems inconceivable that separated and divorced fathers who had shared equally in the nurturance of their children from the outset would be as likely to neglect them, by not seeing them or not contributing to their support, as many do today. It seems reasonable to expect that children after divorce would still have two actively involved parents, and two working adults economically responsible for them. Because these parents had shared equally the paid work and the family work, their incomes would be much more equal than those of most divorcing parents today. Even if they were quite equal, however, the parent without physical custody should be required to contribute to the child's support, *to the point where the standards of living of the two households were the same*. This would be very different from the situation of many children of divorced parents today, dependent for both their nurturance and their economic support solely on mothers whose wage work has been interrupted by primary parenting.

It is impossible to predict all the effects of moving toward a society without gender. Major current injustices to women and children would end. Men would experience both the joys and the responsibilities of far closer and more sustained contact with their children than many have today. Many immensely influential spheres of life—notably politics and the professional occupations—would for the first time be populated more or less equally by men and women, most of whom were also actively participating parents. This would be in great contrast to today, when most of those who rise to influential positions are either men who, if fathers, have minimal contact with their children, or women who have either forgone motherhood altogether or hired others as full-time caretakers for their children because of the demands of their careers.

These are the people who make policy at the highest levels—policies not only *about* families and their welfare and about the education of children, but about the foreign policies, the wars and the weapons that will determine the future or the lack of future for all these families and children. Yet they are almost all people who gain the influence they do in part by never having had the day-to-day experience of nurturing a child. This is probably the most significant aspect of our gendered division of labor, though the least possible to grasp. The effects of changing it could be momentous.

Protecting the Vulnerable

The pluralism of beliefs and modes of life is fundamental to our society, and the genderless society I have just outlined would certainly not be agreed upon by all as desirable. Thus when we think about constructing relations between the sexes that could be agreed upon in the original position, and are therefore just from all points of view, we must also design institutions and practices acceptable to those with more traditional beliefs about the characteristics of men and women, and the appropriate division of labor between them. It is essential, if men and women are to be allowed to so divide their labor, as they must be if we are to respect the current pluralism of beliefs, that society protect the vulnerable. Without such protection, the marriage contract seriously exacerbates the initial inequalities of those who entered into it, and too many women and children live perilously close to economic disaster and serious social dislocation; too many also live with violence or the continual threat of it. It should be noted here that the rights and obligations that the law would need to promote and mandate in order to protect the vulnerable need not—and should not—be designated in accordance with sex, but in terms of different functions or roles performed. There are only a minute percentage of “house husbands” in this country, and a very small number of men whose work lives take second priority after their wives’. But they can quite readily be protected by the same institutional structures that can protect traditional and quasi-traditional wives, so long as these are designed without reference to sex.

Gender-structured marriage, then, needs to be regarded as a currently necessary institution (because still chosen by some) but one that is socially problematic. It should be subjected to a number of legal requirements, at least when

there are children.¹ Most important, there is no need for the division of labor between the sexes to involve the economic dependence, either complete or partial, of one partner on the other. Such dependence can be avoided if both partners have *equal legal entitlement* to all earnings coming into the household. 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. In many cases, of course, this would not change the way couples actually manage their finances; it would simply codify what they already agree on—that the household income is rightly shared, because in a real sense jointly earned. Such couples recognize the fact that the wage-earning spouse is no more supporting the homemaking and child-rearing spouse than the latter is supporting the former; the form of support each offers the family is simply different. Such couples might well take both checks, deposit them in a joint account, and really share the income, just as they now do with the earnings that come into the household.

In the case of some couples, however, altering the entitlement of spouses to the earned income of the household as I have suggested *would* make a significant difference. It would make a difference in cases where the earning or higher-earning partner now directly exploits this power, by refusing to make significant spending decisions jointly, by failing to share the income, or by psychologically or physically abusing the nonearning or low-earning partner, reinforced by the notion that she (almost always the wife) has little option but to put up with such abuse or to take herself and her children into a state of destitution. It would make a difference, too, in cases where the higher-earning partner indirectly exploits this earning power in order to perpetuate the existing division of labor in the family. In such instances considerable changes in the balance of power would be likely to result from the legal and societal recognition that the partner who does most of the domestic work of the family contributes to its well-being just as much, and

therefore rightly *earns* just as much, as the partner who does most of the workplace work.

What I am suggesting is *not* that the wage-working partner pay the homemaking partner for services rendered. I do not mean to introduce the cash nexus into a personal relationship where it is inappropriate. I have simply suggested that since both partners in a traditional or quasi-traditional marriage work, there is no reason why only one of them should get paid, or why one should be paid far more than the other. The equal splitting of wages would constitute public recognition of the fact that the currently unpaid labor of families is just as important as the paid labor. If we do *not* believe this, then we should insist on the complete and equal sharing of both paid and unpaid labor, as occurs in the genderless model of marriage and parenting described earlier. It is only if we *do* believe it that society can justly allow couples to distribute the two types of labor so unevenly. But in such cases, given the enormous significance our society attaches to money and earnings, we should insist that the earnings be recognized as equally earned by the two persons. To call on Walzer's language, we should do this in order to help prevent the inequality of family members in the sphere of wage work to invade their domestic sphere.

It is also important to point out that this proposal does not constitute unwarranted invasion of privacy or any more state intervention into the life of families than currently exists. It would involve only the same kind of invasion of privacy as is now required by such things as registration of marriages and births, and the filing of tax returns declaring numbers and names of dependents. And it *seems* like intervention in families only because it would alter the existing relations of power within them. If a person's capacity to fulfill the terms of his or her work is dependent on having a spouse at home who raises the children and in other ways sustains that worker's day-to-day life, then it is no more interventionist to pay both equally for their contributions than only to pay one.

The same fundamental principle should apply to separation and divorce, to the extent that the division of labor has been practiced within a marriage. Under current divorce laws, as we have seen, the terms of exit from marriage are disadvantageous for almost all women in traditional or quasi-traditional marriages. Regardless of the consensus that existed about the division of the family labor, these women lose most of the income that has supported them *and* the social status that attached to them

¹ *Gender-structured ... are children* Mary Ann Glendon has set out a "children first" approach to divorce (Glendon, *Abortion and Divorce*, pp. 94ff.); here I extend the same idea to ongoing marriage, where the arrival of a child is most often the point at which the wife becomes economically dependent. I see no reason why what I propose here should be restricted to couples who are legally married. It should apply equally to "common law" relationships that produce children, and in which a division of labor is practiced.

because of their husband's income and employment, often at the same time as suddenly becoming single parents, and prospective wage workers for the first time in many years. This combination of prospects would seem to be enough to put most traditional wives off the idea of divorcing even if they had good cause to do so. In addition, since divorce in the great majority of states no longer requires the consent of both spouses, it seems likely that wives for whom divorce would spell economic and social catastrophe would be inhibited in voicing their dissatisfactions or needs within marriage. The terms of exit are very likely to affect the use and the power of voice in the ongoing relationship. At worst, these women may be rendered virtually defenseless in the face of physical or psychological abuse. This is not a system of marriage and divorce that could possibly be agreed to by persons in an original position in which they did not know whether they were to be male or female, traditionalist or not. It is a fraudulent contract, presented as beneficial to all but in fact to the benefit only of the more powerful.

For all these reasons, it seems essential that the terms of divorce be redrawn so as to reflect the gendered or non-gendered character of the marriage that is ending, to a far greater extent than they do now.¹ The legal system of a society that allows couples to divide the labor of families in a traditional or quasi-traditional manner *must* take responsibility for the vulnerable position in which marital breakdown places the partner who has completely or partially lost the capacity to be economically self-supporting. When such a marriage ends, it seems wholly reasonable to expect a person whose career has been largely unencumbered by domestic responsibilities to support financially the partner who undertook these responsibilities. This support, in the form of combined alimony and child support, should be far more substantial than the token levels often ordered by the courts now. *Both postdivorce households should enjoy the same standard of living.* Alimony should not end after a few years, as the (patronizingly named) "rehabilitative alimony"

¹ *it seems essential ... they do now* My suggestions for protecting traditional and quasi-traditional wives in the event of divorce are similar to those of Lenore Weitzman in *The Divorce Revolution: The Unexpected Social and Economic Consequences for Women and Children in America* (New York: The Free Press, 1985), chap. 11, and Mary Ann Glendon in *Abortion and Divorce*, chap. 2. Although they would usually in practice protect traditional wives, the laws should be gender-neutral so that they would equally protect divorcing men who had undertaken the primary functions of parenting and homemaking.

of today does; it should continue for at least as long as the traditional division of labor in the marriage did and, in the case of short-term marriages that produced children, until the youngest child enters first grade and the custodial parent has a real chance of making his or her own living. After that point, child support should continue at a level that enables the children to enjoy a standard of living equal to that of the noncustodial parent. There can be no reason consistent with principles of justice that some should suffer economically vastly more than others from the breakup of a relationship whose asymmetric division of labor was mutually agreed on.

I have suggested two basic models of family rights and responsibilities, both of which are currently needed because this is a time of great transition for men and women and great disagreement about gender. Families in which roles and responsibilities are equally shared regardless of sex are far more in accord with principles of justice than are typical families today. So are families in which those who undertake more traditional domestic roles are protected from the risks they presently incur. In either case, justice as a whole will benefit from the changes. Of the two, however, I claim that the genderless family is more just, in the three important respects that I spelled out at the beginning of this book: it is more just to women; it is more conducive to equal opportunity both for women and for children of both sexes; and it creates a more favorable environment for the rearing of citizens of a just society. Thus, while protecting those whom gender now makes vulnerable, we must also put our best efforts into promoting the elimination of gender.

The increased justice to women that would result from moving away from gender is readily apparent. Standards for just social institutions could no longer take for granted and exclude from considerations of justice much of what women now do, since men would share in it equally. Such central components of justice as what counts as productive labor, and what count as needs and deserts, would be greatly affected by this change. Standards of justice would become *humanist*, as they have never been before. One of the most important effects of this would be to change radically the situation of women as citizens. With egalitarian families, and with institutions such as workplaces and schools designed to accommodate the needs of parents and children, rather than being based as they now are on the traditional assumption that "someone else" is at home, mothers would not be virtually excluded from positions

of influence in politics and the workplace. They would be represented at every level in approximately equal numbers with men.

In a genderless society, children too would benefit. They would not suffer in the ways that they do now because of the injustices done to women. It is undeniable that the family in which each of us grows up has a deeply formative influence on us—on the kind of persons we want to be as well as the kind of persons we are.¹ This is one of the reasons why one *cannot* reasonably leave the family out of “the basic structure of society,” to which the principles of justice are to apply. Equality of opportunity to become what we want to be would be enhanced in two important ways by the development of families without gender and by the public policies necessary to support their development. First, the growing gap between the economic well-being of children in single-parent and those in two-parent families would be reduced. Children in single-parent families would benefit significantly if fathers were held equally responsible for supporting their children, whether married to their mothers or not; if more mothers had sustained labor force attachment; if high-quality day care were subsidized; and if the workplace were designed to accommodate parenting. These children would be far less likely to spend their formative years in conditions of poverty, with one parent struggling to fulfill the functions of two. Their life chances would be significantly enhanced.

Second, children of both sexes in gender-free families would have (as some already have) much more opportunity for self-development free from sex-role expectations and sex-typed personalities than most do now. Girls and boys who grow up in highly traditional families, in which sex difference is regarded as a determinant of everything from roles, responsibilities, and privileges to acceptable dress, speech, and modes of behavior, clearly have far less freedom to develop into whatever kind of person they want to be than do those who are raised without such constraints. It is too early for us to know a lot about the developmental outcomes and life choices of children who are equally parented by mothers and fathers, since the practice is still so recent—and so rare. Persuasive theories such as Chodorow's, however, would lead us to expect much less differentiation

between the sexes to result from truly shared parenting.² Even now, in most cases without men's equal fathering, both the daughters and the sons of wage-working mothers have been found to have a more positive view of women and less rigid views of sex roles; the daughters (like their mothers) tend to have greater self-esteem and a more positive view of themselves as workers, and the sons, to expect equality and shared roles in their own future marriages.³ We might well expect that with mothers in the labor force *and* with fathers as equal parents, children's attitudes and psychologies will become even less correlated with their sex. In a very crucial sense, their opportunities to become the persons they want to be will be enlarged.

Finally, it seems undeniable that the enhancement of justice that accompanies the disappearance of gender will make the family a much better place for children to develop a sense of justice. We can no longer deny the importance of the fact that families are where we first learn, by example and by how we are treated, not only how people do relate to each other but also how they *should*. How would families not built on gender be better schools of moral development? First, the example of co-equal parents with shared roles, combining love with justice, would provide a far better example of human relations for children than the domination and dependence that often occur in traditional marriage. The fairness of the distribution of labor, the equal respect, and the interdependence of his or her parents would surely be a powerful first example to a child in a family with equally shared roles. Second, as I have argued, having a sense of justice requires that we be able to empathize, to abstract from our own situation and to think about moral and political issues from the points of view of others. We cannot come to either just principles or just specific decisions by thinking, as it were, as if we were nobody, or thinking from nowhere; we must, therefore, learn to think

¹ *the family ... persons we are* Here I paraphrase Rawls's wording in explaining why the basic structure of society is basic. “The Basic Structure as Subject,” *American Philosophical Quarterly* 14, no. 2 (1977): 160.

² *Persuasive theories ... shared parenting* Nancy Chodorow, “Family Structure and Feminine Personality,” in *Woman, Culture, and Society*, ed. M.X. Rosaldo and Louise Lamphere (Stanford: Stanford University Press, 1974); idem, *The Reproduction of Mothering: Psychoanalysis and the Sociology of Gender* (Berkeley: University of California Press, 1978). For related arguments, see also Isaac Balbus, *Marxism and Domination* (Princeton: Princeton University Press, 1978); Dorothy Dinnerstein, *The Mermaid and the Minotaur: Sexual Arrangements and Human Malaise* (New York: Harper & Row, 1976).

³ *both the daughters ... future marriages* Shreve, *Remaking Motherhood*, chaps. 3–7.

from the point of view of others, including others who are different from ourselves.

To the extent that gender is de-emphasized in our nurturing practices, this capacity would seem to be enhanced, for two reasons. First, if female primary parenting leads, as it seems to, to less distinct ego boundaries and greater capacity for empathy in female children, and to a greater tendency to self-definition and abstraction in males, then might we not expect to find the two capacities better combined in children of both sexes who are reared by parents of both sexes? Second, the experience of being nurturers, throughout a significant portion of our lives, also seems likely to result in an increase in empathy, and in the combination of personal moral capacities, fusing feelings with reason, that just citizens need.¹

For those whose response to what I have argued here is the practical objection that it is unrealistic and will cost too much, I have some answers and some questions. Some of what I have suggested would not cost anything, in terms of public spending, though it would redistribute the costs and other responsibilities of rearing children more evenly between men and women. Some policies I have endorsed, such as adequate public support for children whose fathers cannot contribute, may cost more than present policies, but may not, depending on how well they work.² Some, such

as subsidized high-quality day care, would be expensive in themselves, but also might soon be offset by other savings, since they would enable those who would otherwise be full-time child carers to be at least part-time workers.

All in all, it seems highly unlikely that the *long-term* costs of such programs—even if we count only monetary costs, not costs in human terms—would outweigh the long-term benefits. In many cases, the cycle of poverty could be broken—and children enabled to escape from, or to avoid falling into, it—through a much better early start in life.³ But even if my suggestions would cost, and cost a lot, we have to ask: How much do we care about the injustices of gender? How much do we care that women who have spent the better part of their lives nurturing others can be discarded like used goods? How ashamed are we that one-quarter of our children, in one of the richest countries in the world, live in poverty? How much do we care that those who raise children, *because* of this choice, have restricted opportunities to develop the rest of their potential, and very little influence on society's values and direction? How much do we care that the family, our most intimate social grouping, is often a school of day-to-day injustice? How much do we *want* the just families that will produce the kind of citizens we need if we are ever to achieve a just society?

1 *the experience ... citizens need* See, for example, Sara Ruddick, "Maternal Thinking," *Feminist Studies* 6, no. 2 (1980); Diane Ehrensaft, "When Women and Men Mother," in *Mothering: Essays in Feminist Theory*, ed. Joyce Trebilcock (Totowa, NJ: Rowman and Allanheld, 1984); Judith Kegan Gardiner, "Self Psychology as Feminist Theory," *Signs* 12, no. 4 (1987), esp. 778–80.

2 *Some policies ... they work* David Ellwood estimates that "if most absent fathers contributed the given percentages, the program would actually save money" (*Poor Support*, p. 169).

3 *In many cases ... start in life* Schorr's *Within Our Reach* documents the ways in which the cycle of disadvantage can be effectively broken, even for those in the poorest circumstances.