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Justice and Gender

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Theories of justice are centrally concerned with whether, how, and why persons should be treated differently from each other. Which initial or acquired characteristics or positions in society, they ask, legitimize differential treatment of persons by social institutions, laws, and customs? In particular, how should beginnings affect outcomes? The division of humanity into two sexes would seem to provide an obvious subject for such inquiries. We live in a society in whose past the innate characteristic of sex has been regarded as one of the clearest legitimizers of different rights and restrictions, both formal and informal. While the legal sanctions that uphold male dominance have been to some extent eroded within the past century, and more rapidly in the last twenty years, the heavy weight of tradition, combined with the effects of socialization broadly defined, still work powerfully to reinforce roles for the two sexes that are commonly regarded as of unequal prestige and worth.<sup>1</sup> The sexual division of labor within the family, in particular, is not only a fundamental part of the marriage contract, but so deeply influences us in our most formative years that feminists of both sexes who try to reject it find

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1. On the history of the legal enforcement of traditional sex roles and recent changes therein, see Leo Kanowitz, *Sex Roles in Law and Society* (Albuquerque: University of New Mexico Press, 1973, and 1974 Supplement), esp. pts. 2, 4, 5; also Kenneth M. Davidson, Ruth Bader Ginsburg and Herma Hill Kay, *Sex-Based Discrimination* (St. Paul: West Publishing Co., 1974, and 1978 Supplement by Wendy Williams), esp. chap. 2.

themselves struggling against it with varying degrees of ambivalence. Based on this linchpin, the deeply entrenched social institutionalization of sex difference, which I will refer to as “the gender system” or simply “gender,” still permeates our society.

This gender system has rarely been subjected to the tests of justice. When we turn to the great tradition of Western political thought with questions about the justice of gender in mind, it is to little avail. Bold feminists like Mary Astell, Mary Wollstonecraft, Harriet Taylor, and George Bernard Shaw have occasionally challenged the tradition, often using its own premises and arguments to overturn its justification of the unequal treatment of women. But John Stuart Mill is a rare exception to the rule that those who hold central positions in the tradition almost never questioned the justice of the subordination and oppression of women. This phenomenon is undoubtedly due in part to the fact that Aristotle, whose theory of justice has been so influential, relegated women and slaves to a realm of “household justice,” whose participants are not fundamentally equal to the free men who participate in political justice, but inferiors whose natural function is to serve those who are more fully human. The liberal tradition, despite its supposed foundation of individual rights and human equality, is more Aristotelian in this respect than is generally acknowledged.<sup>2</sup> In one way or another, liberals have assumed that the “individual” who is the basic subject of their theories is the male head of a patriarchal household.<sup>3</sup> Thus the application of principles of justice to relations between the sexes, or within the household, has frequently been ruled out from the start.

Other assumptions, too, contribute to the widespread belief that neither women nor the family are appropriate subjects for discussions of justice. One is that women, whether because of their essential disorderliness, their enslavement to nature, their private and particularist inclinations, or their oedipal development, are incapable of developing a sense of justice. This notion can be found—sometimes briefly suggested, sometimes

2. See Judith Hicks Stiehm, “The Unit of Political Analysis: Our Aristotelian Hangover,” in Sandra Harding and Merrill B. Hintikka, eds., *Discovering Reality: Feminist Perspectives on Epistemology, Metaphysics, Methodology, and Philosophy of Science* (Dordrecht: Reidel, 1983), pp. 31–43.

3. See Carole Pateman and Theresa Brennan, “‘Mere Auxiliaries to the Commonwealth’: Women and the Origins of Liberalism,” *Political Studies* 27, no. 2 (June 1979): 183–200; also Susan Moller Okin, “Women and the Making of the Sentimental Family,” *Philosophy & Public Affairs* 11, no. 1 (Winter 1982): 65–88.

developed at greater length—in the works of theorists from Plato to Freud, including Bodin, John Knox, Rousseau, Kant, Hegel and Bentham.<sup>4</sup> The frequent implication is that those who do not possess the qualifications for fully ethical reasoning or action need not have principles of justice applied to them. Finally, in Rousseau (as so often, original) we find the unique claim that woman, being “made to submit to man and even to put up with his injustice,” is imbued innately with a capacity to tolerate the unjust treatment with which she is likely to meet.<sup>5</sup>

For those who are not satisfied with these reasons for excluding women and gender from the subject matter of justice, the great tradition has little to offer, directly at least, to our inquiry. When we turn to contemporary theories of justice, however, we can expect to find more illuminating and positive contributions to the subject of gender and justice. I turn to two such theories, John Rawls’s *A Theory of Justice* and Michael Walzer’s *Spheres of Justice*, to see what they say or imply in response to the question “How just is gender?”<sup>6</sup>

#### JUSTICE AS FAIRNESS

An ambiguity runs throughout John Rawls’s *A Theory of Justice*, continually noticeable to anyone reading it from a feminist perspective. On the one hand, as I shall argue below, a consistent and wholehearted application of Rawls’s liberal principles 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. The major reason is that throughout most of the argument, it is assumed (as throughout almost the entire liberal tradition) that the appropriate

4. See Nannerl O. Keohane, “Female Citizenship: The Monstrous Regiment of Women,” presented at the Annual Meeting of the Conference for the Study of Political Thought, April 6–8, 1979, on Bodin, John Knox and Rousseau; Carole Pateman, “‘The Disorder of Women’: Women, Love, and The Sense of Justice,” *Ethics* 81, no. 1 (October 1980): 20–34, on Rousseau and Freud; Susan Moller Okin, “Thinking like a Woman,” unpublished ms., 1984, on Plato and Hegel; Terence Ball, “Utilitarianism, Feminism and the Franchise: James Mill and his Critics,” *History of Political Thought* 1, no. 1 (Spring 1980): 91–115, on Bentham.

5. Jean-Jacques Rousseau, *Emile*, in *Oeuvres Complètes* 4 (Paris: Pléiade, 1969), pp. 734–35, 750.

6. John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), hereafter referred to as *Theory*; Michael L. Walzer, *Spheres of Justice* (New York: Basic Books, 1983), hereafter referred to as *Spheres*.

subjects of political theories are heads of families. As a result, although Rawls indicates on several occasions that a person's sex is a morally arbitrary and contingent characteristic, and although he states explicitly that the family itself is one of those basic social institutions to which the principles of justice must apply, his theory of justice fails to develop either of these convictions.

Rawls, like almost all political theorists until very recent years, employs supposedly generic male terms of reference. "Men," "mankind," "he" and "his" are interspersed with nonsexist 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."<sup>7</sup> This linguistic usage would perhaps be less significant if it were not for the fact that Rawls is self-consciously a member of a long tradition of moral and political philosophy that has used in its arguments either such supposedly generic masculine terms, or even more inclusive terms of reference ("human beings," "persons," "all rational beings as such"), only to exclude women from the scope of the conclusions reached. Kant is a clear example.<sup>8</sup> 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,"<sup>9</sup> he does not mention the fact that women were not included in that category of "free and equal rational persons," to which 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 super-ego in largely gender-neutral terms, without mentioning that Freud considered women's moral development to be sadly deficient, on account of their incomplete resolution of the Oedipus complex.<sup>10</sup> Thus there is a certain blindness to the sexism of the tradition in which Rawls is a participant, which tends to render his terms of reference even 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, or not?"

7. *Theory*, pp. 105–106, 208–209, 288–89.

8. See Okin, "Women and the Making of the Sentimental Family," pp. 78–82.

9. *Theory*, pp. 251, 256.

10. *Ibid.*, p. 459.

This question is not answered in the important passages that list 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 is to be hidden by the veil of ignorance.<sup>11</sup> But throughout *A Theory of Justice*, while the 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, [and] even the special features of his psychology . . .<sup>12</sup>

“his” sex is not mentioned. Since the parties also “know the general facts about human society,”<sup>13</sup> presumably including the fact that it is structured along the lines of gender both by custom and by law, one might think that whether or not they knew their sex might matter enough to be mentioned. Perhaps Rawls means 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 Rawls’s 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.”<sup>14</sup> He 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 in the establishment of 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.”<sup>15</sup>

11. “Fairness to Goodness,” *Philosophical Review* 84 (1975): 537. He says: “That we have one conception 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.”

12. *Theory*, p. 137; see also p. 12.

14. *Ibid.*, pp. 128, 146.

13. *Ibid.*, p. 137.

15. *Ibid.*, p. 128; see also p. 292.

The head of a family need not necessarily, of course, be a man. The very fact, however, that in common usage the term “female-headed households” is used *only* in reference to households without resident adult males, tends to suggest that it is assumed that any present male adult takes precedence over a female as the household or family head. Rawls does nothing to dispel 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.”<sup>16</sup> He makes the “heads of families” assumption only in order to address the problem of savings between generations, and presumably does not intend it to be a sexist assumption. Nevertheless, Rawls, is effectively trapped by this assumption into the traditional mode of thinking that life within the family and relations between the sexes are not properly to be regarded as part of the subject matter of a theory of social justice.

Before I go on to argue this, I must first point out that Rawls states at the outset of his theory that the family *is* part of the subject matter 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.<sup>17</sup>

He goes on to specify “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. The reason that Rawls makes such institutions the primary subject of his theory of social justice is that they have such profound effects on people’s lives from the start, depending on where they find themselves placed in relation to them. He explicitly distinguishes between these major institutions and other “private associations,” “less comprehensive social groups,” and “various informal conventions and customs of everyday life,”<sup>18</sup> for which the principles of justice satisfactory for the basic structure might be less appropriate or relevant. There is no doubt, then, that in his initial definition of the sphere of social justice, the family is

16. *Ibid.*, p. 289.

17. *Ibid.*, p. 7.

18. *Ibid.*, p. 8.

included.<sup>19</sup> The two principles of justice that Rawls defends in Part I, the principle of equal basic liberty, and the difference principle combined with the requirement of fair equality of opportunity, 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.”<sup>20</sup> Whenever in these basic institutions there are differences in authority, in responsibility, in the distribution of resources such as wealth or leisure, these differences must be both to the greatest benefit of the least advantaged, and attached to positions accessible to all under conditions of fair equality of opportunity.

In Part II, Rawls discusses at some length the application of his principles of justice to almost all of the major social institutions listed at the beginning of the book. The legal protection of freedom of thought and liberty of conscience is defended, as are just 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 justice as fairness might be compatible with certain versions of either. But throughout these discussions, the question 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 principles of justice is now complete,”<sup>21</sup> he has still paid no attention at all to the internal justice of the family. The family, in fact, apart from passing references, appears in *A Theory of Justice* in only three contexts: as the link between generations necessary for the savings principle, as a possible obstacle to fair equality of opportunity—on account of inequalities amongst 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. He mentions it, however, not to *consider* whether or not the family “in some form” is a just institution, but to *assume* it. Clearly regarding it as important, Rawls states as part of his first psychological

19. It is interesting to note that in a subsequent paper on the question why the basic structure of society is the primary subject of justice, Rawls does not mention the family as part of the basic structure. “The Basic Structure as Subject,” *American Philosophical Quarterly* 14, no. 2 (April 1977): 159.

20. *Theory*, p. 61.

21. *Ibid.*, p. 303.



law of moral development: “given that family institutions are just. . . .”<sup>22</sup>

Clearly, however, by Rawls’s own reasoning about the social justice of major institutions, this assumption is unwarranted. For the central tenet of the theory is that justice 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 as fairness are those that individuals in such a hypothetical situation would indeed 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*.<sup>23</sup> As far as children are concerned, Rawls makes a convincing argument from paternalism for their temporary inequality. 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 assumes, then they must *get* to be just in some different way (unspecified by Rawls) than 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 where 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 assumption of the basic rights of citizenship, Rawls 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.”<sup>24</sup> Later, he seems to imply that the injustice and irrationality of racist doctrines are also characteristic of sexist ones.<sup>25</sup> But in spite of these passages, which appear to challenge formal sex discrimination, the discussions of institutions in Part II implicitly rely, in a number of respects, on the assumption that the parties formulating just institutions

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

23. As Jane English says, in a paper that is more centrally concerned with the problems of establishing Rawls’s savings principle than with justice within the family *per se*: “By making the parties in the original position heads of families rather than individuals, Rawls makes the family opaque to claims of justice.” “Justice between Generations,” *Philosophical Studies* 31 (1977): 95.

24. *Theory*, p. 99.

25. *Ibid.*, p. 149.

are (male) heads of (fairly traditional) families, and are therefore not concerned with issues of just distribution within the family. Thus the “head of family” 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.

First, Rawls’s discussion of the distribution of wealth seems to assume that all the parties in the original position expect to be, once the veil of ignorance is removed, 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.<sup>26</sup> This confusion obscures the fact that wages are paid to those in the labor force but that in societies characterized by a gender system (all current societies) a much larger proportion of women’s than men’s labor is unpaid, and is often not even acknowledged to be labor. It obscures the fact that such resulting disparities 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 office, and so on amongst its adult members. Any discussion of justice *within* the family would have to address these issues.

Later, too, in his discussion of the obligations of citizens, Rawls’s assumption that justice is the result of agreement amongst heads of families in the original position seems to prevent him from considering an issue of crucial importance to women as citizens—their 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.”<sup>27</sup> However, the issue of the 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 I, then, Rawls seems in Part II to be so heavily influenced by his “family heads” assumption that he fails to consider as part of the basic structure of society the greater economic dependence of women

26. *Ibid.*, pp. 270–74, 304–309.

27. *Ibid.*, pp. 380–81 (emphasis added).

and the sexual division of labor within the typical family, or any of the broader social repercussions of this basic gender structure. Moreover, in Part III, where Rawls *assumes* the justice of the family “in some form” as a given, although he has not discussed any alternative forms, he sounds very much as though he is thinking in terms of traditional, gendered family structure. The family, he says, is “a small association, normally characterized by a definite hierarchy, in which each member has certain rights and duties.”<sup>28</sup> The family’s role as moral teacher is achieved partly through parental expectations of “the virtues of a good son or a good daughter.”<sup>29</sup> 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.”<sup>30</sup> It seems likely, given these unusual departures from the supposedly generic male terms of reference used throughout the rest of the book, 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.

However, despite this, not only does Rawls, as noted above, “assume that the basic structure of a well-ordered society includes the family *in some form*.” He adds to this the comment that “in a broader inquiry the institution of the family might be questioned, and other arrangements might indeed prove to be preferable.”<sup>31</sup> But why should it require a broader inquiry than that engaged in in *A Theory of Justice*, to ask questions about the institution of the family? Surely Rawls is right at the outset when he names it as one of those basic social institutions that most affects the life chances of individuals. The family is not a private association like a church or a university, which vary considerably in type, and which one can join and leave voluntarily. For although one has some choice (albeit highly constrained) about marrying into a gender-structured family, one has no choice at all about being born into one. Given this, 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

28. *Ibid.*, p. 467.

30. *Ibid.*, p. 468.

29. *Ibid.*

31. *Ibid.*, pp. 462–63 (emphasis added).

take their final aims and interests, their attitudes to themselves and their life, as given.”<sup>32</sup> For the family with its gender structure, female parenting in particular, is clearly a crucial determinant in the different socialization of the two sexes—in 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 to be 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 will develop this conclusion in the final section of the paper. But first I will turn to another recent theory of justice which is argued very differently from Rawls’s, and poses another set of problems from a feminist point of view.

#### JUSTICE IN ITS SEPARATE SPHERES

Michael Walzer’s *Spheres of Justice* is remarkable amongst contemporary theories of justice for the attention that its author pays to sex- and gender-related issues. From its largely non-sexist language to its insistence that the family constitutes a significant “sphere of justice” and its specific references to power imbalances between the sexes and discrimination, Walzer’s theory stands out in contrast to most moral and political philosophers’ continued indifference to feminist issues. Viewing the book through the prism of gender, however, accentuates both its strengths and its weaknesses. The theoretical framework of separate spheres that, in a just society, must allow for different inequalities to exist side by side without creating a situation of domination, has considerable force as a tool for feminist criticism. But I will argue that, to the extent that this criticism is developed and emphasized, it calls into question the cultural relativism that is so essential a part of Walzer’s theory of justice. And to the extent that the relativism flourishes, it seriously blunts the impact of the theory’s feminist potential.

At the beginning of *Spheres of Justice*, Walzer sets out the aims of his theory:

I want to argue . . . that the principles of justice are themselves pluralistic in form; that different social goods ought to be distributed for different reasons, in accordance with different procedures, by different

32. “The Basic Structure as Subject,” p. 160.

agents; and that all these differences derive from different understandings of the social goods themselves—the inevitable product of historical and cultural particularism.<sup>33</sup>

Within this brief summary are contained two criteria for justice, criteria that, I will argue, are not only quite distinct but in serious tension with each other. I will first summarize Walzer's "separate spheres" argument and his relativist or particularist position, and will then show how the conflict between them is readily apparent in the context of issues of gender and their justice or injustice.

It is one of Walzer's fundamental theses that justice does not require the equal distribution of social goods within their respective spheres but, rather, that these spheres of distribution be kept autonomous, in the sense that the inequality that exists within each should not be allowed to translate itself into inequalities within the others. In principle, both the monopoly by one or a few persons of a social good or goods within a single sphere, and the dominance of a good over the command of other goods outside of its sphere, are threats to social justice. But because of his conviction that monopoly is impossible to eliminate without continual state intervention,<sup>34</sup> Walzer concerns himself primarily with the elimination of dominance. His critique of dominance leads to the adoption of the distributive principle that "no social good *x* should be distributed to men and women who possess some other good *y* merely because they possess *y* and without regard to the meaning of *x*."<sup>35</sup> The result of the adoption of this principle would be a society whose justice consisted in the distribution of "different goods to different companies of men and women for different reasons and in accordance with different procedures."<sup>36</sup>

This conception of justice as depending on the autonomy of the various spheres of distribution is presented by Walzer as "a critical principle—indeed, . . . a radical principle."<sup>37</sup> A number of his specific applications of the principle—notably to the issue of worker ownership and control of all but small-scale enterprises<sup>38</sup>—confirm this view, and when we turn to the feminist implications of the separate spheres criterion of justice, we shall see that they, too, can be interpreted as establishing the need for radical social change. Walzer says that the standards for distribution that the criterion establishes

33. *Spheres*, p. 6.

35. *Ibid.*, p. 20.

37. *Ibid.*, p. 10.

34. *Ibid.*, pp. 14–17.

36. *Ibid.*, p. 26.

38. *Ibid.*, pp. 291–303.

are often violated, the goods usurped, the spheres invaded, by powerful men and women.

In fact, the violations are systematic. . . . For all the complexity of their distributive arrangements, most societies are organized on what we might think of as a social version of the gold standard: one good or one set of goods is dominant and determinative of value in all the spheres of distribution. And that good or set of goods is commonly monopolized, its value upheld by the strength and cohesion of its owners.<sup>39</sup>

Having thus indicated the extent to which the “spheres of justice” criterion is commonly violated, Walzer goes on to show how ideology is used to legitimate such violations. Operating in the service of a group’s claim to monopolize a dominant good, “its standard form is to connect legitimate possession with some set of personal qualities through the medium of a philosophical principle.”<sup>40</sup> But Walzer regards ideologies, like conceptions of justice, as pluralistic. In his view, groups using different ideological principles to justify their dominance “compete with one another, struggling for supremacy. One group wins, and then a different one; or coalitions are worked out, and supremacy is uneasily shared. There is no final victory, nor should there be.”<sup>41</sup> If this is an accurate depiction of the past and present situation in our society, it softens the critical impact of Walzer’s first criterion of justice, for it is difficult to see how the dominance and monopoly that he finds characteristic of most societies could coexist with genuinely competing pluralistic ideologies. But before examining it further, we must turn to his second criterion.

Walzer asserts clearly from the start that his theory of justice is highly relativist or, as he puts it, “radically particularist.”<sup>42</sup> Beyond rights to life and liberty, he argues, men’s and women’s rights “do not follow from our common humanity; they follow from shared conceptions of social goods; they are local and particular in character.”<sup>43</sup> “Justice” he says, “is relative to social meanings. . . . A given society is just if its substantive life is lived . . . in a way faithful to the shared understandings of the members.”<sup>44</sup> And since “social meanings are historical in character, . . . distributions, and just and unjust distributions, change over time.”<sup>45</sup>

In the course of establishing and emphasizing the cultural relativism

39. *Ibid.*, p. 10.

41. *Ibid.*

43. *Ibid.*, p. xv.

45. *Ibid.*, p. 9.

40. *Ibid.*, p. 12.

42. *Ibid.*, p. xiv.

44. *Ibid.*, pp. 312–13.

of his theory of justice, Walzer takes issue with philosophers who “leave the city [to] fashion . . . an objective and universal standpoint.”<sup>46</sup> In particular, he argues with Rawls’s development of a theory of justice that is not tied to a particular culture, that does not issue from the shared understandings or agreements of actual historical human beings with full knowledge of who they are and where they are situated in society. While he seems not to disagree that things would be decided by rational subjects behind the veil of ignorance much as Rawls concludes, he is unconvinced of the significance or force of the principles of justice agreed upon in such a situation for those same human beings once they are transformed into “ordinary people, with a firm sense of their own identity, with their own goods in their hands, caught up in everyday troubles.” Would they “reiterate their hypothetical choice or even recognize it as their own [?]”<sup>47</sup> If conclusions about justice are to have “force,” they must be principles chosen not in some such hypothetical situation, but in answer to the question:

What would individuals like us choose, who are situated as we are, who share a culture and are determined to go on sharing it? And this is a question that is readily transformed into, What choices have we already made in the course of our common life? What understandings do we (really) share?<sup>48</sup>

A distinct lack of critical perspective seems to be embodied in this highly relativist criterion for the justice of social arrangements and distributions. If all that Walzer were to mean by a conclusion’s or a system’s having “force” were that they were more readily *enforceable*, he would undoubtedly be right to reject Rawls’s method. But he clearly means more than this. For he says that Rawls’s formula for deciding principles of justice behind the veil of ignorance “doesn’t help very much in determining what choices people will make, or *what choices they should make*, once they know who and where they are.”<sup>49</sup> He means, then, that the principles of justice chosen in a Rawlsian manner do not have any particular *moral* force. To the contrary, it is only “when philosophers . . . write out of a respect for the understandings they share with their fellow citizens [that] they pursue justice justly.”<sup>50</sup>

46. *Ibid.*, p. xiv.

48. *Ibid.*, p. 5.

50. *Ibid.*, p. 320.

47. *Ibid.*, p. 5; see also p. 79.

49. *Ibid.*, p. 79 (emphasis added).

A multitude of complexities, however, is contained within Walzer's reliance on "shared understandings." For he does not want to construct a theory of justice that is completely uncritical of whatever distributions take place and are justified within any given society. He says that the social vision he seeks is "*latent* already . . . in our shared understandings of social goods," and that "the goal . . . is a reflection of a special kind, which picks up *those deeper understandings* of social goods which are not necessarily mirrored in the everyday practice of dominance and monopoly."<sup>51</sup> But how is it to be determined which understandings we "(really) share," deep, latent, and not necessarily mirrored in our practices?

Walzer's reliance on two distinct criteria for justice—"the separate spheres" standard and the "shared understandings" or "social meanings" standard—creates considerable tension within his theory. There seems to be only one way of preventing the two criteria from yielding different conclusions about what is just, and that is to argue that our shared social understandings about issues of justice do in fact satisfy the criterion of "separate spheres." In spite of passages such as that quoted on p. 54 above, Walzer at times appears to believe this to be the case. He says that if a just or egalitarian society "isn't already here—hidden, as it were, in our concepts and categories—we will never know it concretely or realize it in fact," and adds that "our conceptions . . . do tend steadily to proscribe the use of things for the purposes of domination."<sup>52</sup>

Walzer's two criteria for justice are subjected to most strain in relation to each other in the case of fundamentally hierarchical societies, those in which "dominance and monopoly are not violations but enactments of meaning, where social goods are conceived in hierarchical terms." He chooses feudal and caste societies, particularly the latter, in order to explore the challenge posed by such societies to his assumption that "social meanings call for the autonomy, or the relative autonomy, of distributive spheres."<sup>53</sup> Such systems, he says, are

constituted by an extraordinary integration of meanings. Prestige, wealth, knowledge, office, occupation, food, clothing, even the social good of conversation: all are subject to the intellectual as well as to the physical discipline of hierarchy.<sup>54</sup>

51. *Ibid.*, pp. xiv, 26 (emphasis added).

53. *Ibid.*, p. 26.

52. *Ibid.*, pp. xiv–xv.

54. *Ibid.*, p. 27.



The hierarchy itself is determined by a single value—in the case of the caste system, ritual purity, dominated by birth and blood—which dominates over the distribution of all other goods, so that “social meanings overlap and cohere,”<sup>55</sup> losing their autonomy. In such systems, Walzer says, the more perfect the coherence of social meanings, “the less possible it is even to think about complex equality” and “justice will come to the aid of inequality.”<sup>56</sup> Nevertheless, as he must in measuring them against his “shared understandings” or “social meanings” criterion for justice, he asserts unambiguously that such societies can meet “(internal) standards of justice.”<sup>57</sup> By this criterion, indeed, there are no grounds for concluding that caste societies are any less just than societies that do not discriminate on the basis of inborn status or characteristics.

Walzer writes of caste societies, with their undifferentiated social meanings, as if they were distant from anything that characterizes our culture. It is only on this assumption that he is able to perceive his two criteria for a just society as not seriously in conflict in the contemporary context. But when we read his description of caste society, in which an inborn characteristic determines dominant or subordinate status in relation to social goods over the whole range of spheres, it can be seen to bear strong resemblances to the gender system that our society has only begun to shed formally within the last century, and that it still perpetuates to a large extent through the force of its economic structure and custom, and the ideology inherited from its highly patriarchal past. There seem, in fact, to be only two significant differences between caste and gender hierarchies: one is that women have not been physically segregated from men; the other is that, whereas Walzer says that “political power seems always to have escaped the laws of caste,”<sup>58</sup> it has only rarely escaped the laws of gender. Like the caste hierarchy, the gender hierarchy is determined by a single value—sex—with maleness taking the place of ritual purity. Like the hierarchy of caste, that of gender ascribes roles, responsibilities, rights, and other social goods in accordance with an inborn characteristic that is imbued with tremendous significance. All the social goods listed in Walzer’s description of a caste society have been, and many still are, differentially distributed to the members of the two sexes. In the cases of prestige, wealth, knowledge, office, and occupation, this statement is fairly obviously true, although the disparities between

55. *Ibid.*57. *Ibid.*, p. 315.56. *Ibid.*, pp. 27, 313.58. *Ibid.*, p. 27.

the sexes have begun to decline in some of them in recent years. Better and greater amounts of food are often reserved for men in poor classes and cultures, women's clothing has been and still is to a large extent designed either to constrict their movements or to appeal to men rather than for their own comfort and convenience, and women have been excluded from men's conversation in numerous social contexts, from ancient Greece to nineteenth- and twentieth-century after-dinner conversations and men's clubs.<sup>59</sup>

As in caste societies, ideology has played a crucial part in perpetuating the legitimacy of patriarchy. Though Walzer says in the context of caste society that "we should not assume that men and women are ever entirely content with radical inequality,"<sup>60</sup> ideology helps us to comprehend the extent to which they often have been and are content. Taking the gender system as an example, if the family is founded in law and custom on male dominance and female subordination and dependence, if religion inculcates the same hierarchy and enhances it with the mystical and sacred significance of a male god, and if the educational system not only excludes women from its higher reaches but establishes as truth and reason the same intellectual foundations of patriarchy, the opportunity for a competing ideology about sex and gender to arise is seriously limited. In fact, the ideology that is embodied in what has recently been termed "male-stream" thought is undoubtedly one of the most all-encompassing and pervasive examples of ideology in history.<sup>61</sup>

Walzer relies, for the possibility of social change in general, on the flourishing of dissent. In most societies, even if

the ideology that justifies the seizure [of social goods] is widely believed to be true, . . . resentment and resistance are (almost) as pervasive as belief. There are always some people, and after a time there are a great many, who think the seizure is not justice but usurpation.<sup>62</sup>

59. In a passage in which his nonsexist language strains credibility, Walzer says that "in different historical periods," dominant goods such as "physical strength, familial reputation, religious or political office, landed wealth, capital, technical knowledge" have each been "monopolized by some group of men and women" (*Spheres*, p. 11). In fact, men have monopolized these goods to the exclusion of women (and still monopolize some of the most important ones) to at least as great an extent as any group of men and women has monopolized them to the exclusion of any other group.

60. *Spheres*, p. 27.

61. This phrase was coined by Mary O'Brien in *The Politics of Reproduction* (London: Routledge and Kegan Paul, 1981).

62. *Spheres*, p. 12.

But the closer the social system is to a caste system, in which social meanings “overlap and cohere,” the less likely is the appearance or development of such dissent. The more thoroughgoing the dominance, and the more pervasive its ideology across the various spheres, the less chance there is that the whole prevailing structure will be questioned or resisted. By arguing that such a system can meet “(internal) standards of justice” if it is really accepted by its members, Walzer admits the paradox that the more *unjust* a system is by one of his criteria (in that dominance is all-pervasive within it) the more likely it is to be able to enshrine the ideology of the ruling group and hence to meet his other criterion (that it is in accord with shared understandings). The danger of his conception of justice is that what is just depends heavily on what people are persuaded of.<sup>63</sup>

Even if the social meanings in a fundamentally hierarchical society were shared, we should surely be wary of concluding, as Walzer clearly does, that the hierarchy was rendered just by the agreement or lack of dissent.<sup>64</sup> But what if the oppressors and the oppressed disagree fundamentally? What if the oppressors claim, as they often have, that aristocrats, or Brahmins, or men are fully human in a way that serfs, or untouchables, or women are not, and that while the rulers institutionalize equal justice amongst themselves, it is just for them to require the other categories of people to perform functions supportive of the fully human existence of those capable of it? And what if the serfs or untouchables or women somehow actually do become convinced (against all the odds) that they too are fully human and that whatever principles of justice apply amongst their oppressors should rightfully be extended to them too? With disagreements this basic, rather than a meaningful debate being joined, there would seem to be two irreconcilable theories of justice. There would be no shared meanings on the most fundamental of questions.

This problem is rendered even more complex if there are fundamental

63. See Bernard Williams, “The Idea of Equality,” in *Philosophy, Politics and Society* (Second Series), ed. Peter Laslett and W. G. Runciman (Oxford: Basil Blackwell, 1962), pp. 119–20, for a succinct discussion of social conditioning and the justification of hierarchical societies, critical of a position such as Walzer takes. Norman Daniels has recently criticized Walzer on this issue in a review of *Spheres of Justice*, in *The Philosophical Review* XCIV, no. 1 (January 1985): 145–46.

64. See Ronald Dworkin’s review of *Spheres of Justice*, in *New York Review of Books* (April 14, 1983), pp. 4–5, and Walzer’s response in *New York Review of Books* (July 21, 1983).

disagreements not only between the oppressors and the oppressed, but even *within* the ranks of the oppressed. Contemporary views about the gender system are a clear example of such disagreement. As studies of feminism and antifeminism have shown, women themselves are deeply divided on the subject of the gender system, with antifeminist women not rejecting it as unjust, but regarding the continued economic dependence of women and the dominance of the world outside the home by men as natural and inevitable, given women's special reproductive functions.<sup>65</sup> Even amongst feminists, there has grown a rift in recent years between those who see the gender system itself as the problem and look forward to an androgynous society, and those who, celebrating women's unique nature and traditional roles, consider the problem to be not the *existence* of these roles but the *devaluation* of women's qualities and activities by a male-dominated culture.<sup>66</sup> These opposite poles of opinion about the very nature of sex difference and its appropriate social repercussions seem to provide no shared intellectual structure in which to debate distributions. And Walzer's theory of justice provides no criterion for adjudicating between them, aside from an appeal to some deeper, latent understandings which all supposedly hold, beneath their disagreements.

As I pointed out above, the coherence of Walzer's theory of justice depends on the compatibility of his two criteria of justice, which in turn depends upon whether the shared understandings of a society call for the autonomy of different distributive spheres. I have also suggested that contemporary society is still sufficiently pervaded by the caste-like gender system that fully characterized its past that it does not fulfill this condition.

65. For a recent analysis of such attitudes, see Kristin Luker, *Abortion and the Politics of Motherhood* (Berkeley: University of California Press, 1984), esp. chap. 8. Feminists tend to attribute such attitudes in part at least to the influence of patriarchal ideology; it is clear that religion is an important factor. Such an antifeminist posture becomes increasingly difficult to maintain consistently, once feminist reforms are instituted. For then, female proponents of it are faced with the problem of how they are to be successful in reversing political change while maintaining what they believe to be their proper, politically powerless role.

66. For a fair and lucid account of this division, see Iris Marion Young, "Humanism, Gynocentrism and Feminist Politics," *Hypatia: A Journal of Feminist Philosophy* no. 3, a special issue of *Women's Studies International Forum* 8, no. 3 (1985): 173–83. Gynocentric feminism faces a similar problem to that faced by antifeminism: How *can* women's work, concerns and perspectives come to be properly valued, unless women seek and attain power in the predominant, male realm?

While at times Walzer seems forgetful of our patriarchal history,<sup>67</sup> he sometimes shows clear awareness of its current manifestations. At the beginning of his chapter on recognition, for example, he states that the argument to follow applies only in part to women. The extent to which women are still designated and defined by their position within the family, he says, is symbolized by the continued use of the titles “Miss” and “Mrs.”: “the absence of a universal title suggests the continued exclusion of women, or of many women, from the social universe, the sphere of recognition as it is currently constituted.”<sup>68</sup> But this point—that the argument applies only in part to women, or to a few women—is equally applicable to almost all of the other spheres of justice discussed in the book. Political power and office, hard work, money and commodities, security—is any of these things evenly distributed between the two sexes? Surely in each case, the explicit or implicit assignment of women to the functional role of actual or potential wife and mother and, as primary nurturer, to basic dependence upon a man, has a great deal to do with the fact that women are, in general, less benefited by the benefits and more burdened by the burdens, in the distribution of most social goods. While Walzer occasionally extends the feminist perspective he displays in the argument on recognition, and develops briefly a section entitled “The Woman Question,” he frequently overlooks its implications.

Introducing his discussion of the oppression of women, Walzer argues that “the real domination of women has less to do with their familial place than with their exclusion from all other places.” The family disfavors women by imposing sex-roles upon many activities “to which sex is entirely irrelevant.” Liberation from this “political and economic misogyny” begins outside of the family. The market must set “no internal bar to the participation of women.”<sup>69</sup> But, as he seems to imply, in the context of the example of nineteenth-century China, it cannot *end* outside: “The family itself must be reformed so that its power no longer reaches into the sphere of office” (or any of the other spheres of distribution, we might add).<sup>70</sup> On a number of occasions, both within his section on “The Woman Question” and elsewhere, Walzer criticizes the operation of the gender

67. See note 59 above.

68. *Spheres*, p. 252. See also William Safire, “On Language,” and the Editors’ response, *New York Times Magazine*, Sunday, August 5, 1984, pp. 8–10. In 1986, the *New York Times* finally agreed to use the term “Ms.” in certain circumstances.

69. *Spheres*, pp. 240–41.

70. *Ibid.*, p. 240.

system outside of the family. But he pays almost no attention to its continued operation within.

This lacuna is certainly not attributable to a belief that justice is not an appropriate moral virtue for families. For Walzer, although he perceives the family as “a sphere of special relationships,”<sup>71</sup> also asserts plainly that “the sphere of personal relations, domestic life, reproduction, and child-rearing remains . . . the focus of enormously important distributions,”<sup>72</sup> and where there are distributions, whether of responsibilities, rights, favors or goods, there is potential for justice and injustice. He does not, however, give this important sphere of distribution the attention it would seem to warrant. While all kinds of hard (undesirable but necessary) work done for wages are discussed at some length, virtually no attention is paid to all the unpaid work, much of it “hard” by his definition, that is done by women at home, and he refers only briefly to the immensely time-consuming activity of child care. If his argument were not in so many respects egalitarian, one might suppose that he accepted, as a less egalitarian thinker might, paid domestic labor for those who could afford it as the solution to these demands on wives and/or mothers who chose to work, to seek recognition, political power or office, and so on, in the outside world. But this is clearly not an acceptable solution, since he regards families with live-in servants as “inevitably . . . little tyrann[ies],” and considers domestic service of any sort to be “degraded” work.<sup>73</sup> In an egalitarian society, at any rate, he considers that the market will raise the wages of unskilled workers much closer to those of skilled ones than at present, with the desirable result that workers will be much less likely to take on such degraded work.<sup>74</sup> To compound the problems of working couples with children, he disapproves of the communal care of young children as “likely to result in a great loss of love,” except in a small, close-knit society such as the kibbutz.<sup>75</sup> This is reiterated in a passage in which he talks of children being “abandoned to bureaucratic rearing.”<sup>76</sup>

How, then, is the unpaid work that is currently done almost entirely by women within the household to be done in a society that regards the family, and relations between the sexes in particular, as an appropriate sphere for the operations of justice? Walzer’s answers to this question

71. *Ibid.*, p. 229.

73. *Ibid.*, p. 52.

75. *Ibid.*, p. 233n.

72. *Ibid.*, p. 242.

74. *Ibid.*, pp. 179–80.

76. *Ibid.*, p. 238.

are so rapidly whisked over, in a clause and a footnote respectively, that they are easily missed. In the chapter on hard work—which is mostly concerned with hard wage work (also, as he points out, largely done by women)—he suggests that the only answer to hard, and particularly to dirty, work in a society of equals is that “at least in some partial and symbolic sense, we will all have to do it.”<sup>77</sup> Otherwise, those who do it will be degraded by it and will never be equal members of the political community. “What is required, then, is a kind of domestic *corvée*, not only in households—though it is especially important there—but also in communes, factories, offices, and schools.”<sup>78</sup> Thus in a society of equals, “at least in some partial and symbolic sense,” housework will be shared, regardless of sex. And, while child care is a different matter, since it hardly meets his negative definition of “hard work” (at least, most of the time), Walzer suggests the same solution. Parenthetically, in a footnote, he asks “(why can’t the parents share in social reproduction?)”<sup>79</sup>

With one important proviso,<sup>80</sup> I would affirm that these solutions (if the sharing is real and complete rather than symbolic) represent the only way in which the injustices inherent in the traditional gender-structured family can be done away with. Until the unpaid and largely unrecognized work of the household is shared equally by its adult members, women will not have equal opportunities with men either within the family or in any of the other spheres of distribution—from politics to free time, from

77. *Ibid.*, p. 174.

78. *Ibid.*, p. 175.

79. *Ibid.*, p. 233n. The importance of shared childrearing for justice between the sexes is not due to its being undesirable work, for in favorable circumstances it can be immensely challenging and pleasurable. It is the immensely time-consuming nature of childrearing, and the everpresence of its demands, that make its just distribution essential. While Walzer asserts that free time is not readily convertible into other social goods (p. 184), I would strongly dissent. The kind of free time that one does *not* have when primarily or solely responsible for small children is translatable into many things, including education, career advancement and recognition, the pursuit of political office and wealth, as well as just plain leisure. On the other hand, those who do not share in parenting to a substantial extent could be said to suffer injustice in the sense that they miss out on its own special social rewards, the experiences of intimacy with and nurturing love for a child.

80. Walzer is too quick to dismiss day care for small children as a partial solution. Even a “mass society” does not have to provide “mass” day care. It can provide small-scale, loving day care for all if it cares enough and is prepared to subsidize the full costs for parents unable to afford them. Good day care, besides being a positive experience for the child, also helps to solve two other problems: without it, the shared parenting solution is of no help at all to single parents, of whom there are increasing numbers, mainly women; and good, subsidized day care can help to alleviate the obstacle that the inequality of family situation poses for equality of opportunity.

recognition to security to money. This sharing is necessary if Walzer's separate spheres criterion for justice is to be met—if a society of equal men and women is to distribute its social goods in such a way that what happens within the family is not to dominate over, to invade, all the other spheres of justice. But, on the other hand (and perhaps this is why it is so rapidly brushed past in the argument), this solution constitutes a radical break not only from prevailing patterns of behavior but also from widely, though not completely, shared understandings of our society about the social meanings of sex and gender. It constitutes no less than the abolition of gender in its most entrenched bastion, with likely reverberations throughout all social spheres. Only if it could be argued that deep or latent in our shared current understandings lies the justification for the total abolition of gender could Walzer claim that his solution to sex inequality is just by his relativist criterion.

Thus the paradox of Walzer's theory of justice is strikingly exemplified by the theory's feminist implications. Insofar as the reduction of domination requires a thoroughgoing feminism that undermines the very roots of our gendered institutions, it is in considerable tension with the relativist requirement that a just society is one that abides by its shared understandings. And insofar as the latter criterion is applied, the feminist implications of the theory lose their force, on account of the deeply rooted attitudes about sex differences that we have inherited from our past and continue to imbibe from many aspects of our culture.

#### WOMEN AND JUSTICE IN THEORY AND PRACTICE

I have argued that Walzer's requirement that justice be relative to "shared understandings" or "social meanings" tends to conflict with his "separate spheres" criterion of justice. It is also inadequate as a foundation for a moral theory. On some important issues in contemporary society—gender in particular—there are no fully shared understandings. To the extent that understandings are in fact shared in this or any existing society, their influence may be due to the past or present hegemony of certain groups over others. Moreover, divisions between conservative and radical standpoints on such issues may be so deep that they provide little foundation from which the different parties, *situated as they actually are*, can come to any conclusions about what is just. The significance of Rawls's central, brilliant idea of the original position, in which one's



characteristics and position in society are not known, is that it forces one to question shared understandings from all points of view, and ensures that the principles of justice chosen are acceptable to everyone, regardless of what position he ends up in.

The problem for a feminist reader of Rawls's theory as stated by Rawls himself however, is encapsulated in that ambiguous "he." As I have shown above, 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 with its branches extending into virtually every corner of our lives—is one of the fundamental structures of our society. If, however, we read Rawls taking seriously both the notion that those behind the veil of ignorance are sexless persons, 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 a Rawlsian theory of justice in a gendered society.

I will 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 points to several things. First, it graphically demonstrates the importance, in thinking about justice, of a concept like Rawls's original position, which makes us put ourselves into the positions of others—especially positions that we ourselves can never be in. Second, it 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 institutionalize the formal legal equality of the sexes and at the same time to enact laws concerning pregnancy, abortion, maternity leave, and so on, that in effect discriminate against women, not as women *per se*, but as "pregnant persons." The U.S. 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."<sup>81</sup> One of

81. *General Electric vs. Gilbert*, 429, U.S. 125 (1976).

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." Finally, however, the illustration suggests 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* pregnant, what is much more doubtful is whether, in constructing principles of justice, they can imagine themselves *women*. This raises the question whether, in fact, sex is a morally irrelevant and contingent human characteristic, in a society structured by gender.

Let us first assume that sex is contingent in this way, though I will later question this assumption. Let us suppose that it is possible, as Rawls clearly considers that it is, to hypothesize the moral thinking of representative human beings, ignorant of their sex and of all the other things that are 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 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"<sup>82</sup> must include the knowledge that women have been and continue to be the less advantaged sex in a 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, since its unequal assigning of responsibilities and privileges to the two sexes and its socialization of children into sex roles make it, in its current form, a crucial institution for the preservation of sex inequality.

It is impossible to discuss here all the ways in which the principles of justice that Rawls arrives at are inconsistent with a gender-structured society. A general explanation of this point and three examples to illustrate it will have to suffice. The critical impact of a feminist reading of Rawls comes chiefly from his second principle, which requires that inequalities be "to the greatest benefit of the least advantaged" and "attached to offices and positions open to all."<sup>83</sup> 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 disallow any linkage between these roles

82. *Theory*, p. 137.

83. *Ibid.*, p. 302.

and sex. Gender, as I have defined it in this article, with its ascriptive designation of positions and expectations of behavior in accordance with the inborn characteristic of sex, could no 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.”<sup>84</sup> 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 than men for housework and child care, whether or not they also work for wages outside the home. In fact, both the assigning of these responsibilities to women—resulting in their asymmetrical economic dependency on men—and also the related responsibility of husbands to support their wives, compromise the liberty of choice of occupation of both sexes. 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” but that work can be “meaningful for all.”<sup>85</sup> These conditions are far more likely to be met in a society which 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.

Second, the abolition of gender seems essential for the fulfillment of Rawls’s criteria 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.”<sup>86</sup> 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,”<sup>87</sup> it is just as clearly applicable to sex differences. And the

84. *Ibid.*, p. 274.

85. *Ibid.*, p. 529.

86. *Ibid.*, p. 222; see also pp. 202–205, 221–28.

87. *Ibid.*, p. 228.

equal political representation of women and men, especially if they are parents, is clearly inconsistent with our gender system.

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.<sup>88</sup> 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 preserve either from the need to pander to or servilely provide for the pleasures of the other. They would be highly motivated, for example, to find a means of regulating pornography that did not seriously compromise freedom of speech. In general, they would be unlikely to tolerate basic social institutions that asymmetrically either forced or gave strong incentives to members of one sex to become 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 made explicit by taking seriously the fact that those formulating the principles of justice do not know their sex. At the beginning of my brief discussion 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 can hypothesize ignorance of this fact about them, imagining themselves as *sexless*, free and equal, rational, moral persons. First, I will explain why, unless this assumption is a reasonable one, there are likely to be further feminist ramifications for a Rawlsian theory of justice, as well as those I have just sketched out. I will then argue that the assumption is very probably not plausible in any society that is structured along the lines of gender. The conclusion I reach is that not only is the disappearance of gender necessary if social justice is to be enjoyed in practice by members of both sexes, but 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 hypoth-

88. *Ibid.*, pp. 440, 396; see also pp. 178–79.

esize free and rational moral persons in the original position who, 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, which 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.”<sup>89</sup> 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.<sup>90</sup> He does not mean that those in the original position will agree about *all* moral or social issues, but that complete agreement will be reached on all basic principles, or “essential understandings.”<sup>91</sup> It is a crucial assumption of this argument for unanimity, however, that all the parties have similar motivations and psychologies (he assumes mutually disinterested rationality and an absence of envy), and that they have experienced similar patterns of moral development (they are 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.<sup>92</sup>

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 not only differ in respect of interests, superficial opinions, prejudices, and points of view that we can discard for the purpose of formulating principles of justice, but also differ in their basic psychologies, conceptions of self in relation to others, and experiences of moral development. A number of feminist scholars have argued in recent years that, in a gender-structured society, women’s and men’s different life experiences in fact affect their respective psychologies, modes of thinking, and patterns of moral development in significant ways.<sup>93</sup> Special attention has been paid to the effects on the

89. *Ibid.*, pp. 516–17.

90. *Ibid.*, pp. 139–41.

91. *Ibid.*, pp. 516–17.

92. *Ibid.*, p. 149.

93. Major works 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 and Row, 1977); Nancy Chodorow, *The Reproduction of Mothering* (Berkeley: University of California Press, 1978); Carol Gilligan, *In a Different Voice* (Cambridge, MA: Harvard University Press, 1982); Nancy Hartsock, *Money, Sex,*

psychological and moral development of both sexes of the fact, fundamental to our gendered society, that children of both sexes are primarily reared 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 with others. 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 respects subordinate to the other. Feminist theorists' scrutiny and analysis of the different experiences that we encounter as we develop, from our actual lived lives to our absorption of their ideological underpinnings, have in valuable ways filled out de Beauvoir's claim that "one is not born, but rather becomes, a woman."<sup>94</sup>

What is already clearly 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 in the cartoon. The formative influence on small children of female parenting, especially, seems to suggest that sex difference is more likely to affect one's moral psychology, and therefore 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 theory can be developed only when there is full participation by both sexes in the dialogue that is moral and political philosophy. This will not come to pass until women take their place with men in the enterprise in approximately equal numbers and in positions of comparable

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*and Power* (New York: Longmans, 1983). Two of the more important individual papers are Jane Flax, "The Conflict between Nurture and Autonomy in Mother-Daughter Relationships and within Feminism," *Feminist Studies* 4, no. 2 (Summer 1978); Sara Ruddick, "Maternal Thinking," *Feminist Studies* 6, no. 2 (Summer 1980). A good summary and discussion of "women's standpoint" is presented in Alison Jaggar, *Feminist Politics and Human Nature* (Totowa, NJ: Rowman and Allanheld, 1983), chap. 11.

94. Simone de Beauvoir, *The Second Sex* (1949; reprint ed., London: New English Library, 1969), p. 9.

influence. In a society structured along the lines of gender, this is most unlikely to happen.

In itself, moreover, it is insufficient for the complete 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 when men participate equally in what has been principally women's realm 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 creative life, will members of both sexes 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 so on are completely represented by the males of the species, this assumption itself is revealed as a part of the male-dominated ideology of our gendered society.

It is not feasible to indicate here at any length what effect the consideration of women's standpoint might have on a theory of justice. I would suggest, however, that in the case of Rawls's theory, it might place in doubt some assumptions and conclusions, while reinforcing others. For example, Rawls's discussion of rational plans of life and primary goods might be focused more on relationships and less exclusively on the complex activities that his "Aristotelian principle" values most highly, if it were to encompass the traditionally more female parts of life.<sup>95</sup> On the other hand, those aspects of Rawls's theory, such as the difference principle, that seem to require a greater capacity to identify with others than is normally characteristic of liberalism, might be strengthened by reference to conceptions of relations between self and others that seem in a gendered society to be more predominantly female.

In the earlier stages of working on this article, I thought mainly in

95. Brian Barry has made a similar, though more general, criticism of the Aristotelian principle in *The Liberal Theory of Justice* (Oxford: Oxford University Press, 1973), pp. 27–30.

terms of what justice has to say about gender, rather than about the effects of gender on justice. I looked at two recent theories of justice from this perspective, and found that although Walzer's focused far more attention on women's place in society, it was in fact Rawls's that could more consistently yield feminist principles of justice when the standpoint of women was taken into account. But, given the reliance of this latter theory on the agreement of representative human beings about the basic moral principles that are to govern their lives, I conclude that, while we can use it along the way to critique existing inequalities, we cannot complete such a theory of justice until the life experiences of the two sexes become as similar as their biological differences permit. Such a theory, and the society that puts it into practice, will be fundamentally influenced by the participation of both women and men in all spheres of human life. Not only is gender incompatible with a just society but the disappearance of gender is likely to lead in turn to important changes in the theory and practices of justice.