

Justice and Gender

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We as a society pride ourselves on our democratic values. We don't believe people should be constrained by innate differences from being able to achieve desired positions of influence to improve their well-being; equality of opportunity is our professed aim. The Preamble to our Constitution stresses the importance of justice, as well as the general welfare and the blessings of liberty. The Pledge of Allegiance asserts that our republic serves "liberty and justice for all."

Yet substantial inequalities between the sexes still exist in our society. . . .

An equal sharing between the sexes of family responsibilities, especially child care, is "the great revolution that has not happened."¹ . . . Until there is justice within the family, women will not be able to gain equality in politics, at work, or in any other sphere.

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... The typical current practices of family life, structured to a large extent by gender, are not just. Both the expectation and the experience of the division of labor by sex make women vulnerable. As I shall show, a cycle of power relations and decisions pervades both family and workplace, each reinforcing the inequalities between the sexes that already exist within the other. ...

A central source of injustice for women these days is that the law, most noticeably in the event of divorce, treats more or less as equals those whom custom, workplace discrimination, and the still conventional division of labor within the family have made very unequal. Central to this socially created inequality are two commonly made but inconsistent presumptions: that women are primarily responsible for the rearing of children; and that serious and committed members of the work force (regardless of class) do not have primary responsibility, or even shared responsibility, for the rearing of children. The old assumption of the workplace, still implicit, is that workers have wives at home. It is built not only into the structure and expectations of the workplace but into other crucial social institutions, such as schools, which make no attempt to take account, in their scheduled hours or vacations, of the fact that parents are likely to hold jobs.

Now, of course, many wage workers do not have wives at home. Often, they are wives and mothers, or single, separated, or divorced mothers of small children. But neither the family nor the workplace has taken much account of this fact. Employed wives still do by far the greatest proportion of unpaid family work, such as child care and housework. ... Thus the cycle of inequality is perpetuated. Often hidden from view within a marriage, it is in the increasingly likely event of marital breakdown that the socially constructed inequality of married women is at its most visible.

This is what I mean when I say that gender-structured marriage makes women vulnerable. These are not matters of natural necessity, as some people would believe. Surely nothing in our natures dictates that men should not be equal participants in the rearing of their children. Nothing in the nature of work makes it impossible to adjust it to the fact that people are parents as well as workers. That these things have not happened is part of the historically, socially constructed differentiation between the sexes that feminists have come to call *gender*. We live in a society that has over the years regarded the innate characteristic of sex as one of the clearest legitimizers of different rights and restrictions, both formal and informal. While the legal sanctions that uphold male dominance have begun to be eroded in the past

century, and more rapidly in the last twenty years, the heavy weight of tradition, combined with the effects of socialization, still works powerfully to reinforce sex roles that are commonly regarded as of unequal prestige and worth. The sexual division of labor has not only been a fundamental part of the marriage contract, but so deeply influences us in our formative years that feminists of both sexes who try to reject it can find themselves, struggling against it with varying degrees of ambivalence. Based on the linchpin, "gender"—by which I mean the *deeply entrenched institutionalization of sexual difference*—still permeates our society.

THE CONSTRUCTION OF GENDER

Due to feminism and feminist theory, gender is coming to be recognized as a social factor of major importance. Indeed, the new meaning of the word reflects the fact that so much of what has traditionally been thought of as sexual difference is now considered by many to be largely socially produced.² Feminist scholars from many disciplines and with radically different points of view have contributed to the enterprise of making gender fully visible and comprehensible. At one end of the spectrum are those whose explanations of the subordination of women focus primarily on biological difference as causal in the construction of gender,³ and at the other end are those who argue that biological difference may not even lie at the core of the social construction that is gender,⁴ the views of the vast majority of feminists fall between these extremes. . . . Many injustices are experienced by women *as women*, whatever the differences among them and whatever other injustices they also suffer from. The past and present gendered nature of the family, and the ideology that surround it, affects virtually all women, whether or not they live or ever lived in traditional families. Recognizing this is not to deny or de-emphasize the fact that gender may affect different subgroups of women to a different extent and in different ways.

The potential significance of feminist discoveries and conclusions about gender for issues of social justice cannot be overemphasized. They undermine centuries of argument that started with the notion that not only the distinct differentiation of women and men but the domination of women by men, being natural, was therefore inevitable and not even to be considered in discussions of justice. . . .

Issues of family justice, in particular—from child custody and terms of divorce to physical and sexual abuse of wives and children—have become increasingly visible and pressing, and are commanding increasing attention

from the police and court systems. There is clearly a major "justice crisis" in contemporary society arising from issues of gender.

THEORIES OF JUSTICE AND THE NEGLECT OF GENDER

During these same two decades, there has been a great resurgence of theories of social justice. Political theory, which had been sparse for a period before the late 1960s except as an important branch of intellectual history, has become a flourishing field, with social justice as its central concern. Yet, remarkably, major contemporary theorists of justice have almost without exception ignored the situation I have just described. They have displayed little interest in or knowledge of the findings of feminism. They have largely bypassed the fact that the society to which their theories are supposed to pertain is heavily and deeply affected by gender, and faces difficult issues of justice stemming from its gendered past and present assumptions. Since theories of justice are centrally concerned with whether, how, and why persons should be treated differently from one another, this neglect seems inexplicable. These theories are *about* which initial or acquired characteristics or positions in society legitimize differential treatment of persons by social institutions, laws, and customs. They are *about* how and whether and to what extent beginnings should affect outcomes. . . .

How can theories of justice that are ostensibly about people in general neglect women, gender, and all the inequalities between the sexes? One reason is that most theorists *assume*, though they do not discuss, the traditional, gender-structured family. Another is that they often employ gender-neutral language in a false, hollow way. Let us examine these two points.

THE HIDDEN GENDER-STRUCTURED FAMILY

In the past, political theorists often used to distinguish clearly between "private" domestic life and the "public" life of politics and the marketplace, claiming explicitly that the two spheres operated in accordance with different principles. They separated out the family from what they deemed the subject matter of politics, and they made closely related, explicit claims about the nature of women and the appropriateness of excluding them from civil and political life. Men, the subjects of the theories, were able to make the transition back and forth from domestic to public life with ease, largely because of the functions performed by women in the family.⁵ When we turn to contemporary theories of justice, superficial appearances can easily lead to the impression that they are inclusive of women. In fact, they continue the same

"separate spheres" tradition, by ignoring the family, its division of labor, and the related economic dependency and restricted opportunities of most women. The judgment that the family is "nonpolitical" is implicit in the fact that it is simply not discussed in most works of political theory today. In one way or another . . . almost all current theorists continue to assume that the "individual" who is the basic subject of their theories is the male head of a fairly traditional household. Thus the application of principles of justice to relations between the sexes, or within the household, is frequently, though tacitly ruled out from the start. In the most influential of all twentieth-century theories of justice, that of John Rawls, family life is not only assumed, but is assumed to be just—and yet the prevalent gendered division of labor within the family is neglected, along with the associated distribution of power, responsibility, and privilege. . . .

Moreover, this stance is typical of contemporary theories of justice. They persist, despite the wealth of feminist challenges to their assumptions, in their refusal even to discuss the family and its gender structure, much less to recognize the family as a political institution of primary importance. . . . Michael Walzer's *Spheres of Justice*, too, is exceptional in this regard, but . . . the conclusion that can be inferred from his discussion of the family—that its gender structure is unjust—does not sit at all easily with his emphasis on the shared understandings of a culture as the foundation of justice.⁶ For gender is one aspect of social life about which clearly, in the United States in the latter part of the twentieth century, there are no shared understandings.

What is the basis of my claim that the family, while neglected, is *assumed* by theorists of justice? One obvious indication is that they take mature, independent human beings as the subjects of their theories without any mention of how they got to be that way. We know, of course, that human beings develop and mature only as a result of a great deal of attention and hard work, by far the greater part of it done by women. But when theorists of justice talk about "work," they mean paid work performed in the marketplace. They must be assuming that women, in the gender-structured family, continue to do their unpaid work of nurturing and socializing the young and providing a haven of intimate relations—otherwise there would be no moral subjects for them to theorize about. But these activities apparently take place outside the scope of their theories. Typically, the family itself is not examined in the light of whatever standard of justice the theorist arrives at.⁷

The continued neglect of the family by theorists of justice flies in the face of a great deal of persuasive feminist argument. . . . Scholars have

clearly revealed the interconnections between the gender structure inside and outside the family and the extent to which the person is political. They have shown that the assignment of primary parenting to women is crucial, both in forming the gendered identities of men and women and in influencing their respective choices and opportunities in life. Yet, so far, the simultaneous assumption and neglect of the family has allowed the impact of these arguments to go unnoticed in major theories of justice.

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GENDER AS A ISSUE OF JUSTICE

For three major reasons, this state of affairs is unacceptable. The first is the obvious point that women must be fully included in any satisfactory theory of justice. The second is that equality of opportunity, not only for women but for children of both sexes, is seriously undermined by the current gender injustices of our society. And the third reason is that, as has already been suggested, the family—currently the linchpin of the gender structure—must be just if we are to have a just society, since it is within the family that we first come to have that sense of ourselves and our relations with others that is at the root of moral development.

COUNTING WOMEN IN

When we turn to the great tradition of Western political thought with questions about the justice of the treatment of the sexes in mind, it is to little avail. Bold feminists like Mary Astell, Mary Wollstonecraft, William Thompson, Harriet Taylor, and George Bernard Shaw have occasionally challenged the tradition, often using its own premises and arguments to overturn its explicit or implicit justification of the inequality of women. But John Stuart Mill is a rare exception to the rule that those who hold central positions in the tradition almost never question the justice of the subordination of women.⁸ This phenomenon is undoubtedly due in part to the fact that Aristotle, whose theory of justice has been so influential, relegated women to a sphere of “household justice”—populated by persons who are not fundamentally equal to the free men who participate in political justice, but inferior 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.⁹ In one way or another, almost all liberal theorists have

assumed that the "individual" who is the basic subject of the theories is the male head of a patriarchal household.¹⁰ Thus they have not usually considered applying the principles of justice to women or to relations between the sexes.

When we turn to contemporary theories of justice, however, we expect to find more illuminating and positive contributions to the subject of gender and justice. As the mission of the family and the falseness of their gender-neutral language suggest, however, mainstream contemporary theories of justice do not address the subject any better than those of the past. Theories of justice that apply to only half of us simply won't do; the inclusiveness falsely implied by the current use of gender-neutral terms must become real. Theories of justice must apply to all of us, and to all of human life, instead of assuming silently that half of us take care of whole areas of life that are considered outside the scope of social justice. In a just society, the structure and practices of families must afford women the same opportunities as men to develop their capacities, to participate in political power, to influence social choices, and to be economically as well as physically secure.

Unfortunately, much feminist intellectual energy in the 1980s has gone into the claim that "justice" and "rights" are masculinist ways of thinking about morality that feminists should eschew or radically revise, advocating a morality of care.¹¹ The emphasis is misplaced, I think, for several reasons. First, what is by now a vast literature on the subject shows that the evidence for differences in women's and men's ways of thinking about moral issues is not (at least yet) very clear; neither is the evidence about the source of whatever differences there might be.¹² It may well turn out that any differences can be readily explained in terms of roles, including female primary parenting, that are socially determined and therefore alterable. . . .

Second, . . . I think the distinction between an ethic of justice and an ethic of care has been overdrawn. The best theorizing about justice, I argue, has integral to it the notions of care and empathy, of thinking of the interests and well-being of others who may be very different from ourselves. It is, therefore, misleading to draw a dichotomy as though they were two contrasting ethics. The best theorizing about justice is not some abstract "view from nowhere," but results from the carefully attentive consideration of *everyone's* point of view. This means, of course, that the best theorizing about justice is not good enough if it does not, or cannot readily be adapted to, include women and their points of view as fully as men and their points of view.

GENDER AND EQUALITY OF OPPORTUNITY

The family is a crucial determinant of our opportunities in life, of what we "become." It has frequently been acknowledged by those concerned with real equality of opportunity that the family presents a problem.¹³ But though they have discerned a serious problem, these theorists have underestimated it because they have seen only half of it. They have seen that the disparity among families in terms of the physical and emotional environment, motivation, and material advantages they can give their children has a tremendous effect upon children's opportunities in life. We are not born as isolated, equal individuals in our society, but into family situations: some in the social middle, some poor and homeless, and some superaffluent; some to a single or soon-to-be-separated parent, some to parents whose marriage is fraught with conflict, some to parents who will stay together in love and happiness. Any claims that equal opportunity exists are therefore completely unfounded. . . .

But even if all these disparities were somehow eliminated, we would still not attain equal opportunity for all. This is because what has not been recognized as an equal opportunity problem, except in feminist literature and circles, is the disparity *within* the family, the fact that its gender structure is itself a major obstacle to equality of opportunity. This is very important in itself, since one of the factors with most influence on our opportunities in life is the social significance attributed to our sex. The opportunities of girls and women are centrally affected by the structure and practices of family life, particularly by the fact that women are almost invariably primary parents. What nonfeminists who see in the family an obstacle to equal opportunity have *not* seen is that the extent to which a family is gender-structured can make the sex we belong to a relatively insignificant aspect of our identity and our life prospects or an all-pervading one. This is because so much of the social construction of gender takes place in the family, and particularly in the institution of female parenting. . . .

Enhancing equal opportunity for women, important as it is in itself, is also a crucial way of improving the opportunities of many of the most disadvantaged children.

As there is a connection among the parts of this problem, so is there a connection among some of the solutions: much of what needs to be done to end the inequalities of gender, and to work in the direction of ending gender itself, will also help to equalize opportunity from one family to another. Subsidized, high-quality day care is obviously one such thing; another is the adaptation of the workplace to the needs of parents. . . .

THE FAMILY AS A SCHOOL OF JUSTICE

One of the things that theorists who have argued that families need not or cannot be just, or who have simply neglected them, have failed to explain is how, within a formative social environment that is *not* founded upon principles of justice, children can learn to develop that sense of justice they will require as citizens of a just society. Rather than being one among many co-equal institutions of a just society, a family is its essential foundation.

It may seem uncontroversial, even obvious, that families must be just because of the vast influence they have on the moral development of children. But this is clearly not the case. I shall argue that unless the first and most formative example of adult interaction usually experienced by children is one of justice and reciprocity, rather than one of domination and manipulation or of unequal altruism and one-sided self-sacrifice, and unless they themselves are treated with concern and respect, they are likely to be considerably hindered in becoming people who are guided by principles of justice. Moreover, I claim, the sharing of roles by men and women, rather than the division of roles between them, would have a further positive impact because the experience of *being* a physical and psychological nurturer—whether of a child or of another adult—would increase that capacity to identify with and fully comprehend the viewpoints of others that is important to a sense of justice. In a society that minimized gender this would be more likely to be the experience of all of us.

Almost every person in our society starts life in a family of some sort or other. . . . While its forms are varied, the family in which a child is raised, especially in the earliest years, is clearly a crucial place for early moral development and for the formation of our basic attitudes to others. It is, potentially, a place where we can *learn to be just*. It is especially important for the development of a sense of justice that grows from sharing the experiences of others and becoming aware of the points of view of others who are different in some respects from ourselves, but with whom we clearly have some interests in common.

The importance of the family for the moral development of individuals was far more often recognized by political theorists of the past than it is by those of the present. Hegel, Rousseau, Tocqueville, Mill, and Dewey are obvious examples that come to mind. Rousseau, for example, shocked by Plato's proposal to abolish the family, says that it is

as though there were no need for a natural base on which to form conventional ties; as though the love of one's nearest were not the principle

of the love one owes the state; as though it were not by means of the small fatherland which is the family that the heart attaches itself to the large ones.¹⁴

Defenders of both autocratic and democratic regimes have recognized the political importance of different family forms for the formation of citizens. On the one hand, the nineteenth-century monarchist Louis de Bonald argued against the divorce reforms of the French Revolution, which he claimed had weakened the patriarchal family, on the grounds that "in order to keep the state out of the hands of the people, it is necessary to keep the family out of the hands of women and children."¹⁵ Taking this same line of thought in the opposite direction, the U. S. Supreme Court decided in 1879 in *Reynolds v. Nebraska* that familial patriarchy fostered despotism and was therefore intolerable. Denying Mormon men the freedom to practice polygamy, the Court asserted that it was an offense "subversive of good order" that "leads to the patriarchal principle, . . . [and] when applied to large communities, fetters the people in stationary despotism, while that principle cannot long exist in connection with monogamy."¹⁶

However, while de Bonald was consistent in his adherence to an hierarchical family structure as necessary for an undemocratic political system, the Supreme Court was by no means consistent in promoting an egalitarian family as an essential underpinning for political democracy. For in other decisions of the same period—such as *Bradwell v. Illinois*, the famous 1872 case that upheld the exclusion of women from the practice of law—the Court rejected women's claims to legal equality, in the name of a thoroughly patriarchal, though monogamous, family that was held to require the dependence of women and their exclusion from civil and political life.¹⁷ While bigamy was considered patriarchal, and as such a threat to republican, democratic government, the refusal to allow a married woman to employ her talents and to make use of her qualifications to earn an independent living was not considered patriarchal. It was so far from being a threat to the civil order, in fact, that it was deemed necessary for it, and as such was ordained by both God and nature. Clearly in both *Reynolds* and *Bradwell*, "state authorities enforced family forms preferred by those in power and justified as necessary to stability and order."¹⁸ The Court noticed the despotic potential of polygamy, but was blind to the despotic potential of patriarchal monogamy. This was perfectly acceptable to them as a training ground for citizens.

Most theorists of the past who stressed the importance of the family and its practices for the wider world of moral and political life by no means

insisted on congruence between the structures or practices of the family and those of the outside world. Though concerned with moral development, they bifurcated public from private life to such an extent that they had no trouble reconciling egalitarian, sometimes admittedly unjust, relations founded upon sentiment within the family with a more just, even egalitarian, social structure outside the family. Rousseau, Hegel, Tocqueville—all thought the family was centrally important for the development of morality in citizens, but all defended the hierarchy of the marital structure while spurning such a degree of hierarchy in institutions and practices outside the household. Preferring instead to rely on love, altruism, and generosity as the basis for family relations, none of these theorists argued for just family structures as necessary for socializing children into citizenship in a just society.

The position that justice within the family is irrelevant to the development of just citizens was not plausible even when only men were citizens. John Stuart Mill, in *The Subjection of Women*, takes an impassioned stand against it. He argues that the inequality of women within the family is deeply subversive of justice in general in the wider social world, because it subverts the moral potential of men. Mill's first answer to the question, "For whose good are all these changes in women's rights to be undertaken?" is: "the advantage of having the most universal and pervading of all human relations regulated by justice instead of injustice." Making marriage a relationship of equals, he argues, would transform this central part of daily life from "a school of despotism" into "a school of moral cultivation."¹⁹ He goes on to discuss, in the strongest of terms, the noxious effect of growing up in a family not regulated by justice. Consider, he says, "the self-worship, the unjust self-preference," nourished in a boy growing up in a household in which "by the mere fact of being born a male he is by right the superior of all and every one of an entire half of the human race." Mill concludes that the example set by perpetuating a marital structure "contradictory to the first principles of social justice" must have such "a perverting influence" that it is hard even to imagine the good effects of changing it. All other attempts to educate people to respect and practice justice, Mill claims, will be superficial "as long as the citadel of the enemy is not attacked." Mill felt as much hope for what the family might be as he felt despair at what it was not. "The family, justly constituted, would be the real school of the virtues of freedom," primary among which was "justice, . . . grounded as before an equal, but now also on sympathetic association."²⁰ Mill both saw clearly and had the courage to address what so many other political philosophers either could not see, or saw and turned away from. . . .

But clearly, however equal the legal rights of husbands and wives, this position largely undermines Mill's own insistence upon the importance of marital equality for a just society. His acceptance of the traditional division of labor, without making any provision for wives who were thereby made economically dependent upon their husbands, largely undermines his insistence upon family justice as the necessary foundation for social justice.

Thus even those political theorists of the past who have perceived the family as an important school of moral development have rarely acknowledged the need for congruence between the family and the wider social order, which suggest that families themselves need to be just. Even when they have, as with Mill, they have been unwilling to push hard on the traditional division of labor within the family in the name of justice or equality.

Contemporary theorists of justice, with few exceptions, have paid little or no attention to the question of moral development—of how we are to become just. Most of them seem to think, to adapt slightly Hobbes's notable phrase, that just men spring like mushrooms from the earth.²¹ Not surprisingly, then, it is far less often acknowledged in recent than in past theories that the family is important for moral development, and especially for instilling a sense of justice. . . .

Among major contemporary theorists of justice, John Rawls alone treats the family seriously as the earliest school of moral development. He argues that a just, well-ordered society will be stable only if its members continue to develop a sense of justice. And he argues that families play a fundamental role in the stages by which this sense of justice is acquired. From the parents' love for their child, which comes to be reciprocated, comes the child's "sense of his own value and the desire to become the sort of person that they are."²² The family, too, is the first of that series of "associations" in which we participate, from which we acquired the capacity, crucial for a sense of justice, to see things from the perspectives of others. . . . This capacity—the capacity for empathy—is essential for maintaining a sense of justice of the Rawlsian kind. For the perspective that is necessary for maintaining a sense of justice is not that of the egoistic or disembodied self, or of the dominant few who overdetermine "our" traditions or "shared understandings," or (to use Nagel's term) of "the view from nowhere," but rather the perspective of every person in the society for whom the principles of justice are being arrived at. . . . The problem with Rawls's rare and interesting discussion of moral development is that it rests on the unexplained *assumption* that family institutions are just. If gendered family institutions are *not* just, but are,

rather, a relic of caste or feudal societies in which responsibilities, roles, and resources are distributed, not in accordance with the principles of justice he arrives at or with any other commonly respected values, but in accordance with innate differences that are imbued with enormous social significance, then Rawls's theory of moral development would seem to be built on uncertain ground. This problem is exacerbated by suggestions in some of Rawls's most recent work that families are "private institutions," to which it is not appropriate to apply standards of justice. But if families are to help form just individuals and citizens, surely they must be *just families*.

In a just society, the structure and practices of families must give women the same opportunities as men to develop their capacities, to participate in political power and influence social choices, and to be economically secure. But in addition to this, families must be just because of the vast influence that they have on the moral development of children. The family is the primary institution of formative moral development. And the structure and practices of the family must parallel those of the larger society if the sense of justice is to be fostered and maintained. While many theorists of justice, both past and present, appear to have denied the importance of at least one of these factors, my own view is that both are absolutely crucial. A society that is committed to equal respect for all of its members, and to justice in social distributions of benefits and responsibilities, can neither neglect the family nor accept family structures and practices that violate these norms, as do current gender-based structures and practices. It is essential that children who are to develop into adults with a strong sense of justice and commitment to just institutions spend their earliest and most formative years in an environment in which they are loved and nurtured, *and* in which principles of justice are abided by and respected. What is a child of either sex to learn about fairness in the average household with two full-time working parents, where the mother does, at the very least, twice as much family work as the father? What is a child to learn about the value of a nurturing and domestic work in a home with a traditional division of labor in which the father either subtly or not so subtly uses the fact that he is the wage earner to "pull rank" on or to abuse his wife? What is a child to learn about responsibility for others in a family in which, after many years of arranging her life around the needs of her husband and children, a woman is faced with having to provide for herself and her children but is totally ill-equipped for the task by the life she agreed to lead, has led, and expected to go on leading?