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Justice, Gender and the Family

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JUSTICE, GENDER AND THE FAMILY. By *Susan Moller Okin*. New York: Basic Books. 1989. Pp. viii, 216. \$19.95.

Many of the most important institutions in the United States purport to be dedicated to maintaining a "just" society.¹ For instance, the "criminal justice" system is designed to ensure that all people are treated fairly, and that only the guilty are "brought to justice." In her book *Justice, Gender, and the Family*, Susan Moller Okin² observes that justice is glaringly lacking from one of the cornerstone institutions of American life: the family.

Okin argues that "marriage and the family, as currently practiced in our society, are unjust institutions. They constitute the pivot of a societal system of gender that renders women vulnerable to dependency, exploitation, and abuse" (pp. 135-36). Not all families are unjust, but most fall into traps which render them so. For instance, women who forgo careers for the good of their families often become economically dependent on their husbands.³ This dependency causes women to fear divorce and permits men to dominate family decision-making. Because society as a whole, which shapes individual beliefs, overemphasizes money and undervalues children, the ability of the husband to make truly just family decisions is impaired, if not eliminated. When women seek work outside the home, the justness of family decisions does not change, due to a tendency to burden women with more family responsibilities than men.⁴ Injecting violence into the relationship only further skews the balance of power and decision-making in favor of husbands, again at the expense of justice (pp. 128-29, 152). These are some of the basic, well-reasoned arguments Okin

1. Any precise definition of "just" or "justice" is, rather patently, far beyond the scope of this piece. The reference is only to justice in its vaguest (and hopefully unexceptionable) sense. Okin describes "theories of justice" as being "centrally concerned with whether, how, and why persons should be treated differently from one another." P. 8. She does not define justice in a way that can be neatly summarized in a sentence, or a footnote for that matter. Careful attention must be paid to everyone's point of view. In general, in Okin's view, a just society would work to equalize people's situations. For instance, people should be treated alike, unless their social "power" differed, requiring different treatment.

2. Okin is a Professor of Politics at Brandeis University. She is the author of *WOMEN IN WESTERN POLITICAL THOUGHT* (1979) and numerous articles including: *Justice and Gender*, 16 PHIL. & PUB. AFF. 42 (1987); *The Moral Acceptability of Nuclear Deterrence: A Critique*, POL., Nov. 1983, at 16; *Philosopher Queens and Private Wives: Plato on Women and the Family*, 6 PHIL. & PUB. AFF. 345 (1977); "The Sovereign and His Counsellors": *Hobbes's Reevaluation of Parliament*, 10 POL. THEORY 49 (1982); *Taking the Bishops Seriously*, 36 WORLD POL. 527 (1984); *Women and the Making of the Sentimental Family*, 41 PHIL. & PUB. AFF. 65 (1982); *Rousseau's Natural Woman*, 14 J. POL. 393 (1979).

3. Pp. 146-47; see also *Law, Women, Work, Welfare and the Preservation of Patriarchy*, 131 U. PA. L. REV. 1249, 1317 (1983).

4. Pp. 153-55; see also *Law*, *supra* note 3, at 1330-31.

uses to support her theory that the traditional family structure is unjust.

The family's structure has an impact well beyond the relationship between husbands and wives. Okin stresses repeatedly that children cannot learn to be just if their major unit for learning about justice — the family — is unjust. Unjust children grow into unjust adults, likely to continue the pattern of injustice within the family through their own children. Another effect of family structure is its impact on who holds political power. Public decisionmakers are likely to be "men who, if fathers, have minimal contact with their children, or women who have either forgone motherhood altogether or hired others as full-time caretakers for their children because of the demands of their careers."⁵ Therefore, Okin argues, people not intimately involved with the family are making important policy decisions about abortion, child care, and other issues that affect the family.

Despite the lack of justice in one of society's fundamental institutions, and the corresponding reverberations throughout society, major theories of justice have largely ignored the problem. This is the major thrust of the book. Okin wonders, "Why is it that when we turn to contemporary theories of justice, we do not find illuminating and positive contributions to this question?" (p. 8). For instance, John Rawls initially includes the family in his definition of the sphere of social justice,⁶ but ignores it throughout the remainder of the theory, although he assumes its existence (p. 93). Thus, theorists assume the traditional gendered family will continue to exist even in their new utopias (pp. 8-10). Okin asserts this is why women and the family have not been included in theories of justice. Moreover, by using language which is falsely gender neutral,⁷ the inapplicability of the theories to women in traditional gendered families is masked.

Within this framework, Okin criticizes the failures of a number of

5. P. 179. A study of women who work for large law firms is one example of this phenomenon. "After years of trying to fit a stereotype, many women in private firms concluded that it was simply not possible to run a household, raise children and bill 2,000 hours, and they either dropped out or sought legal work traditionally deemed appropriate for women." Kaye, *Women Lawyers in Big Firms: A Study in Progress Toward Gender Equality*, 57 *FORDHAM L. REV.* 111, 120 (1988) (citing J. ABRAMSON & B. FRANKLIN, *WHERE THEY ARE NOW: THE STORY OF THE WOMEN OF HARVARD LAW 1974* (1986)). A more recent study of students and graduates of Stanford Law School supports a continuing expectation that women will continue to be the primary caretakers of their children. Project, *Gender, Legal Education, and the Legal Profession: An Empirical Study of Stanford Law Students and Graduates*, 40 *STAN. L. REV.* 1209, 1256-59 (1988).

6. J. RAWLS, *A THEORY OF JUSTICE* 7 (1971) (the monogamous family is but one of the major social institutions which are the primary subjects of justice).

7. Gender neutral language discards the exclusive use of the "generic" or "universal" male forms of words. Okin calls language falsely gender neutral if it is merely superficial tolerance of feminist challenges, "ignoring the irreducible biological differences between the sexes, and/or by ignoring their different assigned social roles and consequent power differentials, and the ideologies that have supported them." P. 11.

contemporary theories of justice. For instance, while Michael Walzer's *Spheres of Justice*⁸ addresses the issue of gender and uses gender-neutral language, his theory ultimately fails to address adequately gender justice. Walzer relies on "shared understandings" as a criterion for justice.⁹ Walzer defines shared understandings as the "social meaning," or the value that society as a whole places on a good. For instance, modern U.S. society shares the belief that higher education should be awarded on the basis of merit, not money, and our concept of what is just will include this belief. Okin describes at length how "shared understandings" do not actually exist, and how most concepts which can be considered "shared" are really the result of domination by the most powerful class or sex.¹⁰

Contrary to Walzer's theory of shared understandings, in fact, oppressors and oppressed . . . often disagree fundamentally. Oppressors often claim that they, aristocrats or Brahmins or men, are fully human in ways that serfs or untouchables or women are not But what if the serfs or untouchables or women somehow do become convinced . . . that they are fully human . . . ? [p. 67]

If this consciousness raising were to occur, then the "shared understanding" of inferiority would no longer exist.

Although Okin finds Walzer's theory of justice inadequate, she acknowledges that elements of it remain useful. For example, Okin finds Walzer's overall theory that "separate spheres hav[e] to allow for different inequalities to exist side by side only insofar as . . . 'dominance' is not created," useful as a tool to point out the inequities of gender-structured society (p. 112).

Like Walzer's theory, Rawls' theory of justice shares some of the basic problems Okin attributes to the majority of contemporary theories. First, he uses terms which are supposedly generic — men, mankind, he, his — but really refer to males. "A feminist reader finds it difficult not to keep asking, Does this theory of just apply to women?" (p. 91). Also, in developing his theory, Rawls assumes the gendered family,¹¹ but does not discuss whether the family itself is just. Okin notes,

In fact, apart from passing references, the family appears in *A Theory of Justice* in only three contexts: as the link between generations necessary for the just savings principle; as an obstacle to fair equality of opportunity (on account of the inequalities among families); and as the first

8. M. WALZER, *SPHERES OF JUSTICE* (1983).

9. P. 112. M. WALZER, *supra* note 8, at xv, 312 (rights "follow from shared conceptions of social goods" and "[j]ustice is relative to social meanings").

10. Okin is not the first to criticize Walzer on this point. See, e.g., Dworkin, *To Each His Own* (Book Review), N.Y. Rev. of Books, Apr. 14, 1983, at 4 (1983); Fishkin, *Defending Equality: A View from the Cave* (Book Review), 82 MICH. L. REV. 755 (1984); Mulleniz, *The Limits of "Complex Equality"* (Book Review), 97 HARV. L. REV. 1801, 1806 (1984); Sadurski, *Conventional Morality and Judicial Standards*, 73 VA. L. REV. 339, 386-88 (1987).

11. See *supra* note 7.

school of moral development.¹²

At no point does Rawls subject the family to the same moral examination as other social institutions (p. 97).

These failings do not obscure, for Okin, the brilliance of Rawls' concept. In Rawls' theory of justice, social institutions are constructed by people (heads of families) ignorant of their place in society. Because these people do not know their sex, race and other criteria typically used to discriminate, they are less likely to adopt discriminatory standards out of fear they will be the victim, rather than the benefactor, of such standards. Okin calls this "a powerful concept for challenging the gender structure" (p. 109). Within this framework, for instance, the traditional gender roles in the family, such as the expectation that women will perform most domestic functions regardless of their other commitments, will not be perpetuated because the person establishing this standard cannot be certain that "he" is not really a "she." In this sense, Rawls' theory remains useful.

While Okin partially redeems Walzer and Rawls, she directs much harsher criticism toward the viewpoint expressed by the darling of the conservatives, Allen Bloom. Bloom's *The Closing of the American Mind*¹³ has received much attention (and criticism) for its suggestion that American society is collapsing due to its failure to educate the young elite (p. 34), but Okin has a different point of contention. Bloom accepts the injustice of the family as necessary, and even argues that feminism is "not founded on nature," defying as it does women's natural biological destiny.¹⁴ Rather, Bloom asserts, men are naturally selfish, and women are ruining the traditional family and society by becoming more selfish themselves.¹⁵ Ultimately, Okin attacks Bloom as an aristocrat who never defines the terms he relies on, such as what is the "natural" order of things, in his attack on egalitarianism.¹⁶ Accordingly, she dismisses Bloom's views as inherently inconsistent with the necessary establishment of the egalitarian family.

As ridiculous as Bloom's ideas may appear to a feminist, presumably he is not alone in his thinking. The very existence of systemic injustice in the family alone may indicate some support for Bloom's beliefs. The dearth of critiques of the antifeminist component of his thesis further suggests some popularity of his views.¹⁷ And yet, rather

12. P. 94. Okin argues this assumption is unwarranted given Rawls' argument.

13. A. BLOOM, *THE CLOSING OF THE AMERICAN MIND* (1987).

14. P. 34 (citing A. BLOOM, *supra* note 13, at 38, 99-100).

15. P. 37 (quoting A. BLOOM, *supra* note 13, at 129).

16. Pp. 37-39 ("Most of the time, it is difficult to discern any consistent meaning in Bloom's references to 'the natural,' except that it is whatever preserves the dominance of the white male elite and enables its members, by philosophizing, to come to terms with their own mortality." P. 38).

17. Other than Okin, only one reviewer seems to have taken issue with Bloom for his an-

than offer a coherent response, Okin chooses to dismiss blithely Bloom's viewpoint.

Okin is similarly blithe in her prescription of a response to the injustice of the family. She proposes legislating the egalitarian family into existence by, for example, requiring men to support their children (pp. 39-40). Okin's insistence seems naïve, at best. Changing the law is not always the best answer to every social situation. Indeed, current laws already require men to support their children.¹⁸ Compliance is generally lax, and society has proved unwilling to enforce these laws vigorously.¹⁹ Okin does not address this issue adequately because she fails to show how further changes in the law will change underlying attitudes in a way that the existing laws have not done, and in a way that justice requires. This is but one example of how *Justice, Gender, and the Family* consistently preaches to the converted instead of adequately attempting to convert.²⁰

While the central premise of Okin's book is that the family is unjust, and society is in large part to blame, she fails to recognize the current limitations of society on her own solutions. Just as those she criticizes ignore the family, she ignores the traditionalists. The most telling example of this is in her conclusion. Okin devotes only the last chapter of the book (pp. 170-86) exclusively to her own theory. She proposes making the family more just in two ways. The first is to move away from strictly defined gender roles within the family, and within society (pp. 175-80). The second is to protect those who are made vulnerable by accepting traditional societal roles (pp. 180-83). While these are logical and useful suggestions, Okin does not fully develop them.

More importantly, Okin offers no suggestion for overcoming the attitudes of current adults or children. Assuming a just family will create just children who will believe in and act out the equality of the sexes, how do we create a just family in the first place? Okin's only suggestions are increasing the availability of day care (p. 175) and requiring businesses to make jobs more flexible to adapt to parenting needs (pp. 175-80). Certainly, these changes would make it easier for

tifeminism. See Nussbaum, *Undemocratic Vistas* (Book Review), N.Y. REV. OF BOOKS, Nov. 5, 1987, at 20.

18. E.g., Family Support Act of 1988, Pub. L. No. 100-485, 102 Stat. 2343 (1988) (establishing federal minimum child support laws); ILL. REV. STAT. ch. 40, ¶ 505 (1988); MICH. COMP. LAWS ANN. § 552.602 (West 1988).

19. According to Census Bureau statistics, 1,138,000 women, approximately 26% of those owed child support, were not paid any of the child support owed to them in 1985. BUREAU OF THE CENSUS, U.S. DEPT. OF COMMERCE, STATISTICAL ABSTRACT OF THE UNITED STATES 1989 368 (Table No. 609) (109th ed. 1989).

20. Rawls argues that in order to establish justice as fairness, a consensus needs to be reached. Therefore, "justification is not regarded simply as valid argument from listed premises, even should these premises be true. Rather, justification is addressed to others who disagree with us . . ." Rawls, *Justice as Fairness*, 14 PHIL. & PUB. AFF. 223, 229 (1985).

both parents to work. But how long would these structures have to be in place before they would change prevailing attitudes? Would they make men any more likely to make dinner or do the laundry? Or would they simply be seen as a government commitment to children, possibly hostile to the traditional family?²¹ How would private businesses react to the prospect of losing their "best" workers to their children? Could the government force companies to change their policies without excessively burdening employers' ability to make business decisions? These are but a few of the questions which follow from Okin's suggestions.

Unfortunately, Okin does not provide answers to these questions, or many others. Her response to critics is essentially a dismissal, contained in one paragraph on the last page of the book:

For those whose response to what I have argued here is the practical objection that it is unrealistic and will cost too much, I have some answers and some questions. Some of what I have suggested would not cost anything, in terms of public spending, though it would redistribute the costs and other responsibilities of rearing children more evenly between men and women. Some policies I have endorsed, such as adequate public support for children whose fathers cannot contribute, may cost more than present policies, but may not, depending on how well they work. Some, such as subsidized high-quality day care, would be expensive in themselves, but also might soon be offset by other savings, since they would enable those who would otherwise be full-time child carers to be at least part-time workers. [p. 186]

Because Okin does not address the possible shortcomings in her work, she weakens the impact of an otherwise powerful concept. While developing her theory and adding more depth may have made the book more difficult to read,²² the theory itself would have become more convincing. Thus, as a critique of others' political theories, Okin's book clearly succeeds, but as a call for change it does not offer enough.

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21. This response would not be entirely novel. For instance, President Nixon vetoed a bill which would have expanded the availability of child care "on the grounds that such expanded day care would undermine the role of the family in American society." *Law, supra* note 3, at 1311.

22. In the introduction, Okin mentions her desire to create an easy-to-read book. P. vii. She succeeds, but at the cost of her theory.