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### The Absence of Gendered Justice in Today's Society

On the dawn of the new millennium, the challenge facing some feminists is attempting to link social and economic justice with gender justice. Susan Moller Okin starts her book, Justice, Gender, and the Family, with the statement, "We don't believe people should be constrained by innate differences from being able to achieve desired positions of influence or to improve their well-being; equality of opportunity is our professed aim" (Okin 3). Okin strongly agrees with this philosophy, but maintains that there remain many inequalities in our current society that inhibit some people from obtaining justice. She specifically focuses on the issue of injustice in gender because it pervades our society through the heavy weight of tradition reinforced by the effects of the division of labor and its relation to equality and the family. Okin states:

There is no need for the division of labor between the sexes to involve the economic dependence, either complete or partial, of one partner on the other. Such dependence can be avoided if both partners have equal legal entitlement to all earnings coming into the household. The clearest and simplest way of doing this would be to have employers make out wage checks equally divided between the earner and the partner who provides all or most of his or her unpaid domestic services...since both partners in a traditional or quasi-traditional marriage work, there is no reason why only one of them should get paid, or why one should be paid far more than the other. The equal splitting of wages would constitute public recognition of the fact that the current unpaid labor of families is just as important as the paid labor. (Okin 180-181)

The splitting of wages may seem extreme to many, but Okin has deemed the current justice system as so inadequate in regards to gender that she believes equally divided paychecks is something that "justice demands." The basis of Okin's claim holds that there are three main actions that must occur in the current inadequate system of justice for gender to be properly

acknowledged. First, women must be fully included in any satisfactory theory of justice.

Second, there must be equal opportunity and standing in society for both genders. Third, the family must be viewed as the institution that is managed by both the husband and wife and is the basis for gender equality and moral development of the young.

Okin focuses on gender-based inequality and its consequences. She believes that the inequality originates from living in a society that has regarded the innate characteristic of gender as one of the clearest legitimizers of different rights and restrictions. Okin draws attention to many startling statistics to introduce her topic and highlight the fact that we are not achieving gender equality in society's current system of justice. Okin states gender inequality results in women earning on average 71 percent of the earnings of full-time working men (Okin 3). Okin goes on saying, "One-half of poor and three-fifths of chronically poor households with dependent children are maintained by a single female parent. The poverty rate for elderly women is also nearly twice that of elderly men" (Okin 3). She states that one-fourth of children in the U.S. live in single parent households and in almost ninety percent of those cases, the parent is the mother (Okin 4). Single female parents also maintain one-half of the poor and three-fifths of the chronically poor households with dependent children in the United States (Okin 3). Even the great majority of government officials such as U.S. Senators and Supreme Court Justices are men, and there has never been a female President. Okin believes all of these astonishing facts contribute to the grave injustice in regards to gender in the current justice system.

It is critical to understand and recognize the construction of gender before moving into Okin's arguments for changing the current justice system. Much of what has traditionally been

thought of as a sexual (biological) difference is now considered to be largely socially produced (Okin 6). There is agreement among feminists that gender is indeed a social construction. This view has important implications on justice and fairness. It challenges the traditional view that "started with the notion that not only the distinct differentiation of women by men, being natural, was therefore inevitable and not even to be considered in discussions of justice" (Okin 7). By having a gendered understanding of the subordination of women and recognizing the construction of gender, there is now more significant legitimacy to issues, such as sex discrimination, sexual harassment, abortion, pregnancy in the workplace, parental leave, child care, and surrogate mothering (Okin 7).

Okin's first accusation against the current system of justice is that the contemporary theories of justice almost completely ignore women, which she has deemed absolutely unacceptable. She attributes this ignorance saying, "Most contemporary theorists assume, though they do not discuss, the traditional, gender-structured family and they often employ gender-neutral language in a false, hollow way" (Okin 8). Okin also points out that almost all liberal theorists have made the assumption that the individual who is the basic subject of the theories is the male head of a patriarchal household. These current theories completely neglect the consideration of gender in the situation of justice.

Okin holds that gender is a social not a biological construction, which has been infiltrated by the traditional patriarchal system. She argues that the distinct sexual differences between men and women are natural, but that the domination of women by men is not. She acknowledges the notion that society traditionally has accepted that men have the right to treat women as unequal. That notion is the result of a patriarchal system, which view the "individuals" of society as the

male heads of households. Due to the acceptance of the patriarchal system, philosophers and their theories of justice neglect the issue of inequalities toward women. Many of those philosophers view women as subjects outside the realm that their theories operate.

In Okin's book, she focuses on a number of theorists that she believes have made false assumptions based on tradition or false beliefs. One of the theorists she singles out is John Rawls. Rawls believes that we can imagine ourselves being under a "veil of ignorance" in which we do not know how we are economically situated in society (Okin 90). In such a condition, he believes that rational people would opt for two fundamental principles of fairness. The first requires equality in the assignment of basic rights and duties and the second holds that social and economic inequalities, such as inequalities of wealth and authority, are just only if they result in compensating benefits for everyone, and in particular for the least advantaged members of society (Okin 93). Okin points out, however, that under Rawl's theory, the family is not discussed because it is assumed to be just. By doing this, the prevalent division of labor within most families is outright neglected, as is the effects on the distribution of power, responsibility, and privilege.

Another significant theorist that Okin discusses is Robert Nozick, a libertarian theorist. Okin criticizes Nozick's entitlement theory by demonstrating that it leads to unacceptable conclusions in regards to gender and justice. Nozick claims that one owns what one produces. According to Okin, women must then own their children because they use their own resources to produce them. One of the main problems Okin has with Nozick's entitlement theory is that it neglects and devaluates human reproductive work. Okin holds that theorists like Nozick "are able to ignore the crucial fact that much of human labor, energy, and skill is not devoted to the

production of things that can then belong to their producers. It is devoted to the reproduction of human beings themselves” (Okin 88).

Another contemporary theorist Okin analyzes is Michael Walzer. His theory of justice consists of separate spheres that allow for different inequalities to exist side by side. The family constitutes an individual sphere according to his theory (Okin 111). Each sphere is defined as just by its own set of criteria; there may be some built in inequalities in a particular sphere, which is fine as long as those inequalities do not allow for that one sphere to dominate any other sphere, or allow for the inequality to spill into another sphere (Okin 112). Walzer believes the real domination of women has less to do with the familial place than their exclusion from freedom in the public spheres (Okin 114). Okin argues that when women are treated unjustly in the private sphere due to unequal division of labor, it translates into dominance in the public sphere. Okin holds that gender cannot be justly separated among the spheres.

Okin’s second claim is that she believes equal opportunity and equal standing between genders are not currently present, but must be present for there to be a just society that acknowledges gender. Okin first points out the unequal sharing of family responsibilities. This is especially true in childcare. Okin calls sharing between the sexes of child care, “the great revolution that has not happened” (Okin 4). She says, “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” (Okin 16). She points to two related notions to reinforce this belief and its inequality. First, women are considered to be primarily responsible for the rearing of children. Second, the successful, committed members of the labor force do not have the primary responsibility for the rearing of children. The consequences of these notions of

parenting are one of the main causes for women to earn an average of 30% less than men. This situation of unequal earnings is aggravated even more by the impoverishment of many women and children after separation or divorce when the woman is almost invariably in custody of the children. Okin says, "The division of labor in the typical family leaves most women far less capable than men of supporting themselves, and this disparity is accentuated by the fact that children of separated or divorced parents usually live with their mothers" (Okin 17). Yet another consequence of divorced women, especially if they have been unemployed housewives and mothers throughout the marriage, is that they are likely to devalue their own contributions to the marriage and hence discount their right to their share of the family's assets. Most work performed by women such as parenting has no value under our current measures of progress, which recognize only the goods and services exchanged for pay. Unpaid labor, the vast majority still done by women, is nearly invisible. Failing to value women's unpaid work can produce a subtle wage discrimination by devaluing women's work as a whole. The invisibility of unpaid work in the home and the fact that housework and childcare are assumed to be part of a "woman's role" have contributed to gender inequality in the labor market and hence to more female poverty. Okin holds that women and men must have equal opportunities and in turn an equal standing in society.

Okin's final criticism of the current justice system is that the family must be viewed as the institution that is managed by both the husband and wife, and is the basis for gender equality and moral development of the young. Okin states; "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 (Okin 18). Thus the family is the first school of justice.

Okin calls the family the “essential foundation” for a just society. It is the place that children develop their sense of justice. In order for children to develop a “correct” sense of justice in regard to gender, husbands and wives must not express dominance over one another. Okin claims that “the sharing of the roles by men and women, rather than the division of roles between them, would have a positive impact” (Okin 17-18). Equal parenting and equal participation in other activities of domestic life is crucial to the development of gender equality in justice. As Okin says, “The family is the linchpin of gender, reproducing it from one generation to the next. If the relationship of a child’s parents does not conform to basic standards of justice, how can we expect that child to grow up with a sense of justice” (Okin 170, 135).

Okin maintains that the family must be restructured to reflect equality between husbands and wives. Women are currently handicapped by the division of labor in the family, which has created a series of psychological barriers for wives and women to overcome. The barriers are based on the belief that since husbands usually hold superior jobs to their wives, husbands are superior to their wives. One example of the broad implications of this belief in superiority of males is that society is becoming more accepting of physical abuse by husbands and boyfriends (Okin 129). Okin attributes this “to the fact that violence used to be a legally sanctioned part of male dominance in the patriarchal family” (Okin 129). Another consequence of this belief is that women have lost their authoritative voices (Okin 132). Since men are believed to be superior to women, their authority is also believed to be superior. Perhaps the most significant effect of the division of labor and husbands making more money than wives is that the wives become dependent on the husband’s income. Divorce becomes much more devastating to the wife and

children than to the husband. In California, for example, upon divorce men's average standard of living goes up 42 percent, while women's goes down 73 percent (Okin 161). Hence, Okin says, "It is highly probable that most wives, well aware of this fact, take into consideration in deciding how firm a stand to take on, or even whether to raise, important issues that are likely to be conflictual" (Okin 168). Okin believes that these types of dominance by husbands over wives and men over women must stop, as should the accepting views of society.

Okin holds that justice indeed demands two equally divided paychecks for the husband and wife in the family. She views this as a completely necessary step in moving towards gender equality and gendered justice. Okin says, "The equal splitting of wages would constitute public recognition of the fact that the currently unpaid labor of families is just as important as the paid labor" (Okin 181). By creating this bold new equal legal entitlement to earned funds, society would move closer to Okin's desired system of justice that includes women, raises women's opportunities and standing, and increases moral development and equality in the family.

Will Kymlicka, author of Contemporary Political Philosophy, supports all of Okin's claims in one way or another from a more moderate feminist perspective. Kymlicka acknowledges the problems with the contemporary systems of justice. He, however, differs from Okin in that he deals with them at an even more abstract level and advocates no specific policy action. He ends his discussion saying, "Can we meet our responsibilities for dependent others without giving up the more robust picture of autonomy, and notions of responsibility and justice that make it possible? It's too early to tell" (Kymlicka 285).

Kymlicka accepts many of Okin's arguments and agrees that the current system of justice allows grave injustices to women. He believes that women have become dependent on men

because men hold the most valued positions in society while women are concentrated in lower-paying part-time work (Kymlicka 242). Kymlicka maintains that women are faced with an unfair choice between the family and their careers; this is a decision men do not face (Kymlicka 249). He says, “Where boys pursue personal security by increasing their employment skills, girls pursue security by increasing their attractiveness to men” (Kymlicka 243). Kymlicka states that “the entire society systematically favors men in the defining of jobs, merit, etc.” (Kymlicka 243). This places women at a disadvantage because they then have to pursue what men value and are interested in. Kymlicka also offers an important solution to the problem of dominance by men. He says, “The solution is not only the absence of discrimination, but the presence of power. Equality requires not only equal opportunity for women to pursue male-defined roles, but also equal power to create female-defined roles” (Kymlicka 245).

Kymlicka sheds light on the “false” assumptions that some contemporary theorists have made about the family and justice as well. J.S. Mill made the assumption that although women are as equally capable as men, they will still continue to choose domestic labor (Kymlicka 248). Mill believed that the sexual division of labor had been predetermined by consent and it was ‘the most suitable division of labor between two persons’ (Kymlicka 248). Kymlicka also criticizes the assumptions of John Rawls. Rawls holds that the traditional family is just and “goes on to measure just distributions in terms of ‘household income’ which accrues to the ‘heads of the household,’ so that questions of justice within the family are ruled out of court” (Kymlicka 248). Kymlicka also holds that one of the main reasons that many theorists, all of whom were male, did not question the sexual division of labor was because “male philosophers had no interest in questioning a sexual division of labor from which they benefited” (Kymlicka 253).

Kymlicka also discusses the assumptions behind the social dichotomy between public and private life. Many people assume that family relationships are private and should be governed by “natural instinct and sympathy” (Kymlicka 248). Kymlicka says, “Liberals refuse to interfere in the family because they are committed to the public-private distinction, and because they see the family as the center of the private sphere” (Kymlicka 250). The basic liberal aim of private life is “not to protect the individual from society, but to free society from political interference” (Kymlicka 252). Liberals have deemed the social dichotomy more important than gendered justice and equality.

One of the final points Kymlicka introduces is the relationship between care, gender, and changing the system of justice. Under the current society, women are traditionally the ones that care for others. For example, in marriages it is usually the wife that serves her husband. Kymlicka relates this to the division of labor saying, “Men expect women to attend to their needs, and so they feel subjective hurt whenever they are required to share the burdens of domestic life” (Kymlicka 278). He goes on to call men the oppressors saying, “The oppressors will keenly feel any loss of privilege, while the oppressed are often socialized not to feel subjective hurt at their oppression” (Kymlicka 279). According to Kymlicka, men are going to be much more hesitant to change the current view of justice in regards to gender. Most women, on the other hand, have become socialized into feeling that the current system of justice is acceptable and thus are hesitant to try to create a change to the system.

I am of the firm opinion that the current system of justice in regards to gender is also inadequate. I agree with many of Okin’s arguments and especially Kymlicka’s. Women should indeed be part of any adequate theory of justice; their omission is unacceptable. They should

have equal opportunities as well as equal standing and equal pay. There is no viable reason why only men should hold the most sought after positions. The view of the family should also change. It is indeed the nexus of justice for children. Parents should have equal authority regardless of who is the major breadwinner. After saying this, I am not, however, in agreement with Okin's argument that "justice demands" equally divided paychecks. I don't discount the degrading effects to women of the current system of justice. I think these effects are indeed important and do have an oppressive impact on women; however, I believe the equal splitting of checks to be completely ineffective and a rather trivial way to introduce gender into our system of justice. I hold that the splitting of checks is detrimental for four main reasons: it is inefficient for businesses, it merely serves as a "band-aid" to the current system of justice, it might undermine grassroots feminist movements, and it will give the government excess power.

I believe the equal splitting of checks would be completely inefficient for businesses for two main reasons. First, many couples hold joint checking accounts, so the checks go to the same place regardless of whose name is on them. Second, it is inefficient to expect all businesses to double the amount of paychecks that they send out. In effect this doubles the amount of checks written, the amount of personnel needed in payroll, and the number of transactions recorded by the accounting department. Splitting checks would obviously have a drastic effect on the efficiency of businesses.

I maintain that the equal splitting of checks would merely serve as a "band-aid" to the problem of gender inequality in regards to justice. I am of the firm belief that gender should be included in our system of justice, but that the change to this system should be done at a more abstract level, in which society accepts gender equality as a whole without trivial regulation of

businesses by the government. By requiring the equal splitting of checks, the government would merely be making a cosmetic change to the system of justice. It would not necessary change society's view and attitude towards justice and gender. This regulation would also probably not change the dominance of husbands over wives. If men dominate women and women are socialized to feel inferior to men and thus give in to them, then what will the equal splitting of checks do to make the man not control the money, even if there are two separate checks?

I hold that equal splitting of checks could undermine grassroots movements for gender equality as well. By making this regulation, it could cause the popular feminist movements to become complacent to the issue of gender inequality because they may feel that they are achieving gender equality when I believe that they actually are not. For the women to achieve gendered equality, I firmly believe that they must maintain strong grassroots movements built on solid public support.

I also believe that regulation over the equal splitting of checks would give the government excess power. I am of the opinion that not all society carries the belief that men are superior in some way to women. Thus if the government were to require the equal splitting of checks, it would be restricting the rights of possibly the majority based on the actions of the minority. More importantly, however, I fear that if we give the government the power to regulate such trivial things as the equal splitting of checks, we may lose our power to influence the more important decisions of society.

Okin, Kymlicka, and I all believe that the current system of justice is inadequate in regards to gender. Okin opts for more radical changes, while Kymlicka and I prefer more

gradual modes of change with less government intervention. Regardless, people indeed should not be constrained by innate differences of gender from being able to achieve desired positions and standing; equality must be our professed aim if our society is to be just.

Kymlicka, Will. Contemporary Political Philosophy. Oxford: Oxford University Press, 1990.

Okin, Susan Moller. Justice, Gender, and the Family. United States: Basic Books, 1989.