

JUSTICE,  
GENDER,  
AND  
THE FAMILY

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## Introduction: Justice and Gender

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 or 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 preserves "liberty and justice for all."

Yet substantial inequalities between the sexes still exist in our society. In economic terms, full-time working women (after some very recent improvement) earn on average 71 percent of the earnings of full-time working men. 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 nearly twice that for elderly men.<sup>1</sup> On the political front, two out of a hundred U.S. senators are women, one out of nine justices seems to be considered sufficient female representation on the Supreme Court, and the number of men chosen in each congressional election far exceeds the number of women elected in the entire history of the country. Underlying

and intertwined with all these inequalities is the unequal distribution of the unpaid labor of the family.

An equal sharing between the sexes of family responsibilities, especially child care, is "the great revolution that has not happened."<sup>2</sup> Women, including mothers of young children, are, of course, working outside the household far more than their mothers did. And the small proportion of women who reach high-level positions in politics, business, and the professions command a vastly disproportionate amount of space in the media, compared with the millions of women who work at low-paying, dead-end jobs, the millions who do part-time work with its lack of benefits, and the millions of others who stay home performing for no pay what is frequently not even acknowledged as work. Certainly, the fact that women are doing more paid work does not imply that they are more equal. It is often said that we are living in a postfeminist era. This claim, due in part to the distorted emphasis on women who have "made it," is false, no matter which of its meanings is intended. It is certainly not true that feminism has been vanquished, and equally untrue that it is no longer needed because its aims have been fulfilled. Until there is justice within the family, women will not be able to gain equality in politics, at work, or in any other sphere.

As I argue in detail in chapter 7, 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. Not only women, but children of both sexes, too, are often made vulnerable by gender-structured marriage. One-quarter of children in the United States now live in families with only one parent—in almost 90 percent of cases, the mother. Contrary to common perceptions—in which the situation of never-married mothers looms largest—65 percent of single-parent families are a result of marital separation or divorce.<sup>3</sup> Recent research in a number of states has shown that, in the average case, the standard of living of divorced women and the children who live with them plummets after divorce, whereas the economic situation of divorced men tends to be better than when they were married.

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 in-

equality 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. Women are far more likely to take time out of the workplace or to work part-time because of family responsibilities than are their husbands or male partners. And they are much more likely to move because of their husbands' employment needs or opportunities than their own. All these tendencies, which are due to a number of factors, including the sex segregation and discrimination of the workplace itself, tend to be cyclical in their effects: wives advance more slowly than their husbands at work and thus gain less seniority, and the discrepancy between their wages increases over time. Then, because both the power structure of the family and what is regarded as consensual "rational" family decision making reflect the fact that the husband usually earns more, it will become even less likely as time goes on that the unpaid work of the family will be shared between the spouses. 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 this 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.<sup>4</sup> 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,<sup>5</sup> 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<sup>6</sup>; the views of the vast majority of feminists fall between these extremes. The rejection of biological determinism and the corresponding emphasis on gender as a social construction characterize most current feminist scholarship. Of particular relevance is work in psychology, where scholars have investigated the importance of female primary parenting in the formation of our gendered identities,<sup>7</sup> and in history and anthropology,<sup>8</sup> where emphasis has been placed on the historical and cultural variability of gender. Some feminists have been criticized for developing theories of gender that do not take sufficient account of differences among women, especially race, class, religion, and ethnicity.<sup>9</sup> While such critiques should always inform our research and improve our arguments, it would be a mistake to allow them to detract our attention from gender itself as a factor of significance. Many injustices are experienced by women *as women*, whatever the differences

### Introduction: Justice and Gender

among them and whatever other injustices they also suffer from. The past and present gendered nature of the family, and the ideology that surrounds 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. As I shall make clear in later chapters, despite the fact that such notions cannot stand up to rational scrutiny, they not only still survive but flourish in influential places.

During the same two decades in which feminists have been intensely thinking, researching, analyzing, disagreeing about, and rethinking the subject of gender, our political and legal institutions have been increasingly faced with issues concerning the injustices of gender and their effects. These issues are being decided within a fundamentally patriarchal system, founded in a tradition in which "individuals" were assumed to be male heads of households. Not surprisingly, the system has demonstrated a limited capacity for determining what is just, in many cases involving gender. Sex discrimination, sexual harassment, abortion, pregnancy in the workplace, parental leave, child care, and surrogate mothering have all become major and well-publicized issues of public policy, engaging both courts and legislatures. 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. The division of humanity into two sexes seems to provide an obvious subject for such inquiries. But, as we shall see, this does not strike most contemporary theorists of justice, and their theories suffer in both coherence and relevance because of it. This book is about this remarkable case of neglect. It is also an attempt to rectify it, to point the way toward a more fully humanist theory of justice by confronting the question, "How just is gender?"

Why is it that when we turn to contemporary theories of justice, we do not find illuminating and positive contributions to this question? 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.<sup>10</sup> When we turn to contempo-

#### Introduction: Justice and Gender

rary 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, as will become clear in the chapters that follow, 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 (see chapter 5).

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. Recent theories that pay even less attention to issues of family justice than Rawls's include Bruce Ackerman's *Social Justice in the Liberal State*, Ronald Dworkin's *Talking Rights Seriously*, William Galston's *Justice and the Human Good*, Alasdair MacIntyre's *After Virtue and Whose Justice? Which Rationality?*, Robert Nozick's *Anarchy, State, and Utopia*, and Roberto Unger's *Knowledge and Politics and The Critical Legal Studies Movement*.<sup>11</sup> Philip Green's *Retrieving Democracy* is a welcome exception.<sup>12</sup> Michael Walzer's *Spheres of Justice*, too, is exceptional in this regard, but, as I shall show in chapters 3 and 6, 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.<sup>13</sup> 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.<sup>14</sup>

The continued neglect of the family by theorists of justice flies in the face of a great deal of persuasive feminist argument, as I shall explain further in chapter 6. Scholars have clearly revealed the interconnections between the gender structure inside and outside the family and the extent to which the personal 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.

#### FALSE GENDER NEUTRALITY

Many academics in recent years have become aware of the objectionable nature of using the supposedly generic male forms of nouns and pronouns. As feminist scholars have demonstrated, these words have most often not been used, throughout history and the history of philosophy in particular, with the intent to include women. *Man*, *mankind*, and *he* are going out of style as universal representations, though they have by no means disappeared. But the gender-neutral alternatives that most contemporary theorists employ are often even more misleading than the blatantly sexist use of male terms of reference. For they serve to disguise the real and continuing failure of theorists to confront the fact that the human race consists of persons of two sexes. They are by this means able to ignore the fact that there are some socially relevant physical differences between women and men, and the even more important fact that the sexes have had very different histories, very different assigned social roles and "natures," and very different degrees of access to power and opportunity in all human societies up to and including the present.

False gender neutrality is not a new phenomenon. Aristotle, for example, used *anthropos*—"human being"—in discussions of "the human good" that turn out not only to exclude women but to depend on their subordination. Kant even wrote of "all rational beings as such" in making arguments that he

#### Introduction: Justice and Gender

did not mean to apply to women. But it was more readily apparent that such arguments or conceptions of the good were not about all of us, but only about male heads of families. For their authors usually gave at some point an explanation, no matter how inadequate, of why what they were saying did not apply to women and of the different characteristics and virtues, rights, and responsibilities they thought women ought to have. Nevertheless, their theories have often been read as though they pertain (or can easily be applied) to all of us. Feminist interpretations of the last fifteen years or so have revealed the falsity of this "add women and stir" method of reading the history of political thought.<sup>15</sup>

The falseness of the gender-neutral language of contemporary political theorists is less readily apparent. Most, though not all, contemporary moral and political philosophers use "men and women," "he or she," "persons," or the increasingly ubiquitous "self." Sometimes they even get their computers to distribute masculine and feminine terms of reference randomly.<sup>16</sup> Since they do not explicitly exclude or differentiate women, as most theorists in the past did, we may be tempted to read their theories as inclusive of all of us. But we cannot. Their merely terminological responses to feminist challenges, in spite of giving a superficial impression of tolerance and inclusiveness, often strain credibility and sometimes result in nonsense. They do this in two ways: by 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. Thus gender-neutral terms frequently obscure the fact that so much of the real experience of "persons," so long as they live in gender-structured societies, does in fact depend on what sex they are.

False gender neutrality is by no means confined to the realm of theory. Its harmful effects can be seen in public policies that have directly affected large numbers of women adversely. It was used, for example, in the Supreme Court's 1976 decision that the exclusion of pregnancy-related disabilities from employers' disability insurance plans was "not a gender-based discrimination at all." In a now infamous phrase of its majority opinion, the Court explained that such plans did not discriminate against women because the distinction drawn by such plans was between pregnant women and "non-pregnant persons."<sup>17</sup>

Examples of false gender neutrality in contemporary political theory will appear throughout this book; I will illustrate the concept here by citing just two examples. Ackerman's *Social Justice in the Liberal State* is a book containing scrupulously gender-neutral language. He breaks with this neutrality only, it seems, to *defy* existing sex roles; he refers to the "Commander," who

plays the lead role in the theory, as "she." However, the argument of the book does not address the existing inequality or role differentiation between the sexes, though it has the potential for doing so.<sup>17</sup> The full impact of Ackerman's gender-neutral language without attention to gender is revealed in his section on abortion: a two-page discussion written, with the exception of a single "she," in the completely gender-neutral language of fetuses and their "parents."<sup>18</sup> The impression given is that there is no relevant respect in which the relationship of the two parents to the fetus differs. Now it is, of course, possible to imagine (and in the view of many feminists, would be desirable to achieve) a society in which differences in the relation of women and men to fetuses would be so slight as to reasonably play only a minor role in the discussion of abortion. But this would have to be a society without gender—one in which sexual difference carried no social significance, the sexes were equal in power and interdependence, and "mothering" and "fathering" a child meant the same thing, so that parenting and earning responsibilities were equally shared. We certainly do not live in such a society. Neither is there any discussion of one in Ackerman's theory, in which the division of labor between the sexes is not considered a matter of social (in)justice. In such a context, a "gender-neutral" discussion of abortion is almost as misleading as the Supreme Court's "gender-neutral" discussion of pregnancy.

A second illustration of false gender neutrality comes from Derek Phillips's *Toward a Just Social Order*. Largely because of the extent of his concern—rare among theorists of justice—with how we are to *achieve and maintain* a just social order, Phillips pays an unusual amount of attention to the family. He writes about the family as the locus for the development of a sense of justice and self-esteem, of an appreciation of the meaning of reciprocity, of the ability to exercise unforced choice, and of an awareness of alternative ways of life.<sup>19</sup> The problem with this otherwise admirable discussion is that, apart from a couple of brief exceptions, the family itself is presented in gender-neutral terms that bear little resemblance to actual, gender-structured life.<sup>20</sup> It is because of "parental affection," "parental nurturance," and "child rearing" that children in Phillips's families become the autonomous moral

<sup>17</sup> Ackerman's argument about how we arrive at social justice is in most essentials similar to Rawls's. As will become apparent in chapters 5 and 8, I think such methods can be useful in challenging gender and achieving a humanist theory of justice.

<sup>18</sup> He points out the shortcomings of the "earlier ethic of sacrifice," especially for women. He also welcomes the recent lessening of women's dependence on their husbands, but at the same time blames it for tending to weaken family stability. The falseness of Phillips's gender neutrality in discussing parenting is clearly confirmed later in the book (chaps. 8 and 9), where paid work is "men's" and it is "fathers" who bequeath wealth or poverty on their children.

## Introduction: Justice and Gender

agents that his just society requires its citizens to be. The child's development of a sense of identity is very much dependent upon being raised by "parental figures who themselves have coherent and well-integrated personal identities," and we are told that such a coherent identity is "ideally one built around commitments to work and love." This all sounds very plausible. But it does not take account of the multiple inequalities of gender. In gender-structured societies—in which the child rears are women, "parental nurturance" is largely mothering, and those who do what society regards as "meaningful work" are assumed *not* to be primary parents—women in even the best of circumstances face considerable conflicts between love (a fulfilling family life) and "meaningful work." Women in less fortunate circumstances face even greater conflicts between love (even basic care of their children) and any kind of paid work at all.

It follows from Phillips's own premises that these conflicts are very likely to affect the strength and coherence in women of that sense of identity and self-esteem, coming from love and meaningful work, that he regards as essential for being an autonomous moral agent. In turn, if they are mothers, it is also likely to affect their daughters' and sons' developing senses of their identity. Gender is clearly a major obstacle to the attainment of a social order remotely comparable to the just one Phillips aspires to—but his false gender-neutral language allows him to ignore this fact. Although he is clearly aware of how distant in some other respects his vision of a just social order is from contemporary societies,<sup>21</sup> his use of falsely gender-neutral language leaves him quite unaware of the distance between the type of family that might be able to socialize just citizens and typical families today.

The combined effect of the omission of the family and the falsely gender-neutral language in recent political thought is that most theorists are continuing to ignore the highly political issue of gender. The language they use makes little difference to what they actually do, which is to write about men and about only those women who manage, in spite of the gendered structures and practices of the society in which they live, to adopt patterns of life that have been developed to suit the needs of men. The fact that human beings are born as helpless infants—not as the purportedly autonomous actors who populate political theories—is obscured by the implicit assumption of gendered families, operating outside the range of the theories. To a large extent, contemporary theories of justice, like those of the past, are about men with wives at home.

**Gender as an 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.<sup>22</sup> 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 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>23</sup> 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.<sup>24</sup> 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 omission 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

**Introduction: Justice and Gender**

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.<sup>25</sup> 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.<sup>26</sup> 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. There is certainly no evidence—nor could there be, in such a gender-structured society—for concluding that women are somehow naturally more inclined toward contextuality and away from universalism in their moral thinking, a false concept that unfortunately reinforces the old stereotypes that justify separate spheres. The capacity of reactionary forces to capitalize on the “different moralities” strain in feminism is particularly evident in Pope John Paul II's recent Apostolic Letter, “On the Dignity of Women,” in which he refers to women's special capacity to care for others in arguing for confining them to motherhood or celibacy.<sup>27</sup>

Second, as I shall explain in chapter 5, 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.<sup>28</sup> 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. Decades of neglect of the poor, especially of poor black and Hispanic households, accentuated by the policies of the Reagan years, have brought us farther from the principles of equal opportunity. To come close to them would require, for example, a high and uniform standard of public education and the provision of equal social services—including health care, employment training, job opportunities, drug rehabilitation, and decent housing—for all who need them. In addition to redistributive taxation, only massive reallocations of resources from the military to social services could make these things possible.

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.

## Introduction: Justice and Gender

Moreover, especially in recent years, with the increased rates of single motherhood, separation, and divorce, the inequalities between the sexes have *compounded* the first part of the problem. The disparity among families has grown largely because of the impoverishment of many women and children after separation or divorce. 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. The inadequacy—and frequent nonpayment—of child support has become recognized as a major social problem. Thus the inequalities of gender are now directly harming many children of both sexes as well as women themselves. 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. These and other relevant policy issues will be addressed in chapter 8.

## 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 just 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. Fewer of these families now fit the usual, though by no means universal, standard of previous generations, that is, wage-working father, homemaking mother, and children. More families these days are headed by a single parent; lesbian and gay parenting is no longer so rare; many children have two wage-working parents, and receive at least some of their early care outside the home. 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 one.<sup>29</sup>

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."<sup>30</sup> 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 intol-

Introduction: Justice and Gender

erable. 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."<sup>31</sup>

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.<sup>32</sup> 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."<sup>33</sup> 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 spurring 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."<sup>34</sup> 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 on equal, but now also on sympathetic association."<sup>35</sup> 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.

Despite the strength and fervor of his advocacy of women's rights, however, Mill's idea of a just family structure falls far short of that of many feminists even of his own time, including his wife, Harriet Taylor. In spite of the fact that Mill recognized both the empowering effect of earnings on one's position in the family and the limiting effect of domestic responsibility on women's opportunities, he balked at questioning the traditional division of labor between the sexes. For him, a woman's choice of marriage was parallel to a man's choice of a profession: unless and until she had fulfilled her obligations to her husband and children, she should not undertake anything else. 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 suggests 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.<sup>36</sup> 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. As I have already noted, many theorists pay no attention at all to either the family or gender. In the rare case that the issue of justice within the family is given any sustained attention, the family is not viewed as a potential school of social justice.<sup>37</sup> In the rare case that a theorist pays any sustained attention to the development of a sense of justice or morality, little if any attention is likely to be paid to the family.<sup>38</sup> Even in the rare event that theorists pay considerable attention to the family as the first major locus of moral socialization, they do not refer to the fact that families are almost all still thoroughly gender-structured institutions.<sup>39</sup>

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."<sup>40</sup> The family, too, is the first of that series of "associations" in which we participate, from which we acquire the capacity, crucial for a sense of justice, to see things from the perspectives of others. As I shall show, 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

## JUSTICE, GENDER, AND THE FAMILY

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. As I shall argue, 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 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

## Introduction: Justice and Gender

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?

## Conclusion: Toward a Humanist Justice

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

### Conclusion: Toward a Humanist Justice

theories of justice neglect women and ignore gender. How can we address this injustice?

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

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

the gender structure. If we are to be at all true to our democratic ideals, moving away from gender is essential. Obviously, the attainment of such a social world requires major changes in a multitude of institutions and social settings outside the home, as well as within it.

Such changes will not happen overnight. Moreover, any present solution to the vulnerability of women and children that is just and respects individual freedom must take into account that most people currently live in ways that are greatly affected by gender, and most still favor many aspects of current, gendered practices. Sociological studies confirm what most of us already infer from our own personal and professional acquaintances: there are no currently shared meanings in this country about the extent to which differences between the sexes are innate or environmental, about the appropriate roles of men and women, and about which family forms and divisions of labor are most beneficial for partners, parents, and children.<sup>1</sup> There are those, at one extreme, for whom the different roles of the two sexes, especially as parents, are deeply held tenets of religious belief. At the other end of the spectrum are those of us for whom the sooner all social differentiation between the sexes vanishes, the better it will be for all of us. And there are a thousand varieties of view in between. Public policies must respect people's views and choices. But they must do so only insofar as it can be ensured that these choices do not result, as they now do, in the vulnerability of women and children. Special protections must be built into our laws and public policies to ensure that, for those who choose it, the division of labor between the sexes does not result in injustice. In the face of these difficulties—balancing freedom and the effects of past choices against the needs of justice—I do not pretend to have arrived at any complete or fully satisfactory answers. But I shall attempt in this final chapter to suggest some social reforms, including changes in public policies and reforms of family law, that may help us work toward a solution to the injustices of gender.

Marriage has become an increasingly peculiar contract, a complex and ambiguous combination of anachronism and present-day reality. There is no longer the kind of agreement that once prevailed about what is expected of the parties to a marriage. Clearly, at least in the United States, it is no longer reasonable to assume that marriage will last a lifetime, since only half of current marriages are expected to. And yet, in spite of the increasing legal equality of men and women and the highly publicized figures about married women's increased participation in the labor force, many couples continue to adhere to more or less traditional patterns of role differentiation. As a recent

### Conclusion: Toward a Humanist Justice

article put it, women are "out of the house but not out of the kitchen."<sup>2</sup> Consequently, often working part-time or taking time out from wage work to care for family members, especially children, most wives are in a very different position from their husbands in their ability to be economically self-supporting. This is reflected, as we have seen, in power differentials between the sexes within the family. It means also, in the increasingly common event of divorce, usually by mutual agreement, that it is the mother who in 90 percent of cases will have physical custody of the children. But whereas the greater need for money goes one way, the bulk of the earning power almost always goes the other. This is one of the most important causes of the feminization of poverty, which is affecting the life chances of ever larger numbers of children as well as their mothers. The division of labor within families has always adversely affected women, by making them economically dependent on men. Because of the increasing instability of marriage, its effects on children have now reached crisis proportions.

Some who are critical of the present structure and practices of marriage have suggested that men and women simply be made free to make their own agreements about family life, contracting with each other, much as business contracts are made.<sup>3</sup> But this takes insufficient account of the history of gender in our culture and our own psychologies, of the present substantive inequalities between the sexes, and, most important, of the well-being of the children who result from the relationship. As has long been recognized in the realm of labor relations, justice is by no means always enhanced by the maximization of freedom of contract, if the individuals involved are in unequal positions to start with. Some have even suggested that it is consistent with justice to leave spouses to work out their own divorce settlement.<sup>4</sup> By this time, however, the two people ending a marriage are likely to be far more unequal. Such a practice would be even more catastrophic for most women and children than is the present system. Wives in any but the rare cases in which they as individuals have remained their husbands' socioeconomic equals could hardly be expected to reach a just solution if left "free" to "bargain" the terms of financial support or child custody. What would they have to bargain with?

There are many directions that public policy can and should take in order to make relations between men and women more just. In discussing these, I shall look back to some of the contemporary ways of thinking about justice that I find most convincing. I draw particularly on Rawls's idea of the original position and Walzer's conception of the complex equality found in separate spheres of justice, between which I find no inconsistency. I also keep in mind

critical legal theorists' critique of contract, and the related idea, suggested earlier, that rights to privacy that are to be valuable to all of us can be enjoyed only insofar as the sphere of life in which we enjoy them ensures the equality of its adult members and protects children. Let us begin by asking what kind of arrangements persons in a Rawlsian original position would agree to regarding marriage, parental and other domestic responsibilities, and divorce. What kinds of policies would they agree to for other aspects of social life, such as the workplace and schools, that affect men, women, and children and relations among them? And let us consider whether these arrangements would satisfy Walzer's separate spheres test—that inequalities in one sphere of life not be allowed to overflow into another. Will they foster equality within the sphere of family life? For the protection of the privacy of a domestic sphere in which inequality exists is the protection of the right of the strong to exploit and abuse the weak.

Let us first try to imagine ourselves, as far as possible, in the original position, knowing neither what our sex nor any other of our personal characteristics will be once the veil of ignorance is lifted.<sup>4</sup> Neither do we know our place in society or our particular conception of the good life. Particularly relevant in this context, of course, is our lack of knowledge of our beliefs about the characteristics of men and women and our related convictions about the appropriate division of labor between the sexes. Thus the positions we represent must include a wide variety of beliefs on these matters. We may, once the veil of ignorance is lifted, find ourselves feminist men or feminist women whose conception of the good life includes the minimization of social differentiation between the sexes. Or we may find ourselves traditionalist men or women, whose conception of the good life, for religious or other reasons, is bound up in an adherence to the conventional division of labor between the sexes. The challenge is to arrive at and apply principles of justice having to do with the family and the division of labor between the sexes that can satisfy these vastly disparate points of view and the many that fall between.

There are some traditionalist positions so extreme that they ought not be admitted for consideration, since they violate such fundamentals as equal basic liberty and self-respect. We need not, and should not, that is to say, admit for consideration views based on the notion that women are inherently inferior beings whose function is to fulfill the needs of men. Such a view is no

<sup>4</sup> I say "so far as possible" because of the difficulties already pointed out in chapter 5. Given the deep effects of gender on our psychologies, it is probably more difficult for us, having grown up in a gender-structured society, to imagine not knowing our sex than anything else about ourselves. Nevertheless, this should not prevent us from trying.

### Conclusion: Toward a Humanist Justice

more admissible in the construction of just institutions for a modern pluralist society than is the view, however deeply held, that some are naturally slaves and others naturally and justifiably their masters. We need not, therefore, consider approaches to marriage that view it as an inherently and desirably hierarchical structure of dominance and subordination. Even if it were conceivable that a person who did not know whether he or she would turn out to be a man or a woman in the society being planned would subscribe to such views, they are not admissible. Even if there were no other reasons to refuse to admit such views, they must be excluded for the sake of children, for everyone in the original position has a high personal stake in the quality of childhood. Marriages of dominance and submission are bad for children as well as for their mothers, and the socioeconomic outcome of divorce after such a marriage is very likely to damage their lives and seriously restrict their opportunities.

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

### Moving Away from Gender

First, public policies and laws should generally assume no social differentiation of the sexes. Shared parental responsibility for child care would be both assumed and facilitated. Few people outside of feminist circles seem willing to acknowledge that society does not have to choose between a system of female parenting that renders women and children seriously vulnerable and a system of total reliance on day care provided outside the home. While high-quality day care, subsidized so as to be equally available to all children, certainly constitutes an important part of the response that society should make in order to provide justice for women and children, it is only one part.<sup>5</sup> If we start out with the reasonable assumption that women and men are equally parents of their children, and have equal responsibility for both the unpaid ef-

fort that goes into caring for them and their economic support, then we must rethink the demands of work life throughout the period in which a worker of either sex is a parent of a small child. We can no longer cling to the by now largely mythical assumption that every worker has "someone else" at home to raise "his" children.

The facilitation and encouragement of equally shared parenting would require substantial changes.<sup>6</sup> It would mean major changes in the workplace, all of which could be provided on an entirely (and not falsely) gender-neutral basis. Employers must be required by law not only completely to eradicate sex discrimination, including sexual harassment. They should also be required to make positive provision for the fact that most workers, for differing lengths of time in their working lives, are also parents, and are sometimes required to nurture other family members, such as their own aging parents. Because children are borne by women but can (and, I contend, should) be raised by both parents equally, policies relating to pregnancy and birth should be quite distinct from those relating to parenting. Pregnancy and childbirth, to whatever varying extent they require leave from work, should be regarded as temporarily disabling conditions like any others, and employers should be mandated to provide leave for all such conditions.<sup>7</sup> Of course, pregnancy and childbirth are far more than simply "disabling conditions," but they should be treated as such for leave purposes, in part because their disabling effects vary from one woman to another. It seems unfair to mandate, say, eight or more weeks of leave for a condition that disables many women for less time and some for much longer, while *not* mandating leave for illnesses or other disabling conditions. Surely a society as rich as ours can afford to do both.

Parental leave during the postbirth months must be available to mothers and fathers on the same terms, to facilitate shared parenting: they might take sequential leaves or each might take half-time leave. All workers should have the right, without prejudice to their jobs, seniority, benefits, and so on, to work less than full-time during the first year of a child's life, and to work flexible or somewhat reduced hours at least until the child reaches the age of seven. Correspondingly greater flexibility of hours must be provided for the parents of a child with any health problem or disabling condition. The professions whose greatest demands (such as tenure in academia or the partnership hurdle in law) coincide with the peak period of child rearing must restructure their demands or provide considerable flexibility for those of their workers who are also participating parents. Large-scale employers should also be required to provide high-quality on-site day care for children from infancy up to

### Conclusion: Toward a Humanist Justice

school age. And to ensure equal quality of day care for all young children, *direct government subsidies* (not tax credits, which benefit the better-off) should make up the difference between the cost of high-quality day care and what less well paid parents could reasonably be expected to pay.

There are a number of things that schools, too, must do to promote the minimization of gender. As Amy Gutmann has recently noted, in their present authority structures (84 percent of elementary school teachers are female, while 99 percent of school superintendents are male), "schools do not simply reflect, they perpetuate the social reality of gender preferences when they educate children in a system in which men rule women and women rule children." She argues that, since such sex stereotyping is "a formidable obstacle" to children's rational deliberation about the lives they wish to lead, sex should be regarded as a relevant qualification in the hiring of both teachers and administrators, until these proportions have become much more equal.<sup>8</sup>

An equally important role of our schools must be to ensure in the course of children's education that they become fully aware of the politics of gender. This does not only mean ensuring that women's experience and women's writing are included in the curriculum, although this in itself is undoubtedly important.<sup>9</sup> Its political significance has become obvious from the amount of protest that it has provoked. Children need also to be taught about the present inequalities, ambiguities, and uncertainties of marriage, the facts of workplace discrimination and segregation, and the likely consequences of making life choices based on assumptions about gender. They should be discouraged from thinking about their futures as *determined* by the sex to which they happen to belong. For many children, of course, personal experience has already "brought home" the devastating effects of the traditional division of labor between the sexes. But they do not necessarily come away from this experience with positive ideas about how to structure their own future family lives differently. As Anita Shreve has recently suggested, "the old home-economics courses that used to teach girls how to cook and sew might give way to the new home economics: teaching girls *and* boys how to combine working and parenting."<sup>10</sup> Finally, schools should be required to provide high-quality after-school programs, where children can play safely, do their homework, or participate in creative activities.

The implementation of all these policies would significantly help parents to share the earning and the domestic responsibilities of their families, and children to grow up prepared for a future in which the significance of sex difference is greatly diminished. Men could participate equally in the

nurturance of their children, from infancy and throughout childhood, with predictably great effects on themselves, their wives or partners, and their children. And women need not become vulnerable through economic dependence. In addition, such arrangements would alleviate the qualms many people have about the long hours that some children spend in day care. If one parent of a preschooler worked, for example, from eight to four o'clock and the other from ten to six o'clock, a preschool child would be at day care for only six hours (including nap time), and with each one or both of her or his parents the rest of the day. If each parent were able to work a six-hour day, or a four-day week, still less day care would be needed. Moreover, on-site provision of day care would enable mothers to continue to nurse, if they chose, beyond the time of their parental leave.<sup>11</sup>

The situation of single parents and their children is more complicated, but it seems that it too, for a number of reasons, would be much improved in a society in which sex difference was accorded an absolute minimum of social significance. Let us begin by looking at the situation of never-married mothers and their children. First, the occurrence of pregnancy among single teenagers, which is almost entirely unintended, would presumably be reduced if girls grew up more assertive and self-protective, and with less tendency to perceive their futures primarily in terms of motherhood. It could also be significantly reduced by the wide availability of sex education and contraception.<sup>12</sup> Second, the added weight of responsibility given to fatherhood in a gender-free society would surely give young men more incentive than they now have not to incur the results of careless sexual behavior until they were ready to take on the responsibilities of being parents. David Ellwood has outlined a policy for establishing the paternity of all children of single mothers at the time of birth, and for enforcing the requirement that their fathers contribute to their support throughout childhood, with provision for governmental backup support in cases where the father is unable to pay. These proposals seem eminently fair and sensible, although the minimum levels of support suggested (\$1,500 to \$2,000 per year) are inadequate, especially since the mother is presumed to be either taking care of the child herself or paying for day care (which often costs far more than this) while she works.<sup>13</sup>

Third, never-married mothers would benefit greatly from a work structure that took parenthood seriously into account, as well as from the subsidization of high-quality day care. Women who grew up with the expectation that their work lives would be as important a part of their futures as the work lives of

### Conclusion: Toward a Humanist Justice

men would be less likely to enter dead-ended, low-skilled occupations, and would be better able to cope economically with parenthood without marriage.

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

It is impossible to predict all the effects of moving toward a society without gender. Major current injustices to women and children would end. Men would experience both the joys and the responsibilities of far closer and more sustained contact with their children than many have today. Many immensely influential spheres of life—notably politics and the professional occupations—would for the first time be populated more or less equally by men and women, most of whom were also actively participating parents. This would be in great contrast to today, when most of those who rise to influential positions are either men who, if fathers, have minimal contact with their children, or women who have either forgone motherhood altogether or hired others as full-time caretakers for their children because of the demands of their careers. These are the people who make policy at the highest levels—policies not only about families and their welfare and about the education of children, but about the foreign policies, the wars and the weapons that will determine the future or the lack of future for all these families and children. Yet they are almost all people who gain the influence they do in part by never having had the day-to-day experience of nurturing a child. This is probably the most sig-

nificant aspect of our gendered division of labor, though the least possible to grasp. The effects of changing it could be momentous.

### Protecting the Vulnerable

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

Gender-structured marriage, then, needs to be regarded as a currently necessary institution (because still chosen by some) but one that is socially problematic. It should be subjected to a number of legal requirements, at least when there are children.<sup>14</sup> Most important, there is no need for the division of labor between the sexes to involve the economic dependence, either complete or partial, of one partner on the other. Such dependence can be avoided if both partners have *equal legal entitlement* to all earnings coming into the

<sup>14</sup> I see no reason why what I propose here should be restricted to couples who are legally married. It should apply equally to “common law” relationships that produce children, and in which a division of labor is practiced.

### Conclusion: Toward a Humanist Justice

household. The clearest and simplest way of doing this would be to have employers make out wage checks equally divided between the earner and the partner who provides all or most of his or her unpaid domestic services. In many cases, of course, this would not change the way couples actually manage their finances; it would simply codify what they already agree on—that the household income is rightly shared, because in a real sense jointly earned. Such couples recognize the fact that the wage-earning spouse is no more supporting the homemaking and child-rearing spouse than the latter is supporting the former: the form of support each offers the family is simply different. Such couples might well take both checks, deposit them in a joint account, and really share the income, just as they now do with the earnings that come into the household.

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

What I am suggesting is *not* that the wage-working partner pay the homemaking partner for services rendered. I do not mean to introduce the cash nexus into a personal relationship where it is inappropriate. I have simply suggested that since both partners in a traditional or quasi-traditional marriage work, there is no reason why only one of them should get paid, or why one should be paid far more than the other. The equal splitting of wages would constitute public recognition of the fact that the currently unpaid labor of families is just as important as the paid labor. If we do *not* believe this, then we should insist on the complete and equal sharing of both paid and unpaid labor, as occurs in the genderless model of marriage and parenting described

earlier. It is only if we do believe it that society can justly allow couples to distribute the two types of labor so unevenly. But in such cases, given the enormous significance our society attaches to money and earnings, we should insist that the earnings be recognized as equally earned by the two persons. To call on Walzer's language, we should do this in order to help prevent the inequality of family members in the sphere of wage work to invade their domestic sphere.

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

The same fundamental principle should apply to separation and divorce, to the extent that the division of labor has been practiced within a marriage. Under current divorce laws, as we have seen, the terms of exit from marriage are disadvantageous for almost all women in traditional or quasi-traditional marriages. Regardless of the consensus that existed about the division of the family labor, these women lose most of the income that has supported them and the social status that attached to them because of their husband's income and employment, often at the same time as suddenly becoming single parents, and prospective wage workers for the first time in many years. This combination of prospects would seem to be enough to put most traditional wives off the idea of divorcing even if they had good cause to do so. In addition, since divorce in the great majority of states no longer requires the consent of both spouses, it seems likely that wives for whom divorce would spell economic and social catastrophe would be inhibited in voicing their dissatisfaction or needs within marriage. The terms of exit are very likely to affect the use and the power of voice in the ongoing relationship. At worst, these women may be rendered virtually defenseless in the face of physical or psychological abuse. This is not a system of marriage and divorce that could possibly be agreed to by persons in an original position in which they did not know whether they were to be male or female, traditionalist or not. It is a

### Conclusion: Toward a Humanist Justice

fraudulent contract, presented as beneficial to all but in fact to the benefit only of the more powerful.

For all these reasons, it seems essential that the terms of divorce be redrawn so as to reflect the gendered or nongendered character of the marriage that is ending, to a far greater extent than they do now.<sup>15</sup> The legal system of a society that allows couples to divide the labor of families in a traditional or quasi-traditional manner must take responsibility for the vulnerable position in which marital breakdown places the partner who has completely or partially lost the capacity to be economically self-supporting. When such a marriage ends, it seems wholly reasonable to expect a person whose career has been largely unencumbered by domestic responsibilities to support financially the partner who undertook these responsibilities. This support, in the form of combined alimony and child support, should be far more substantial than the token levels often ordered by the courts now. *Both postdivorce households should enjoy the same standard of living.* Alimony should not end after a few years, as the (patronizingly named) "rehabilitative alimony" of today does; it should continue for at least as long as the traditional division of labor in the marriage did and, in the case of short-term marriages that produced children, until the youngest child enters first grade and the custodial parent has a real chance of making his or her own living. After that point, child support should continue at a level that enables the children to enjoy a standard of living equal to that of the noncustodial parent. There can be no reason consistent with principles of justice that some should suffer economically vastly more than others from the breakup of a relationship whose asymmetric division of labor was mutually agreed on.

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

protecting those whom gender now makes vulnerable, we must also put our best efforts into promoting the elimination of gender.

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

In a genderless society, children too would benefit. They would not suffer in the ways that they do now because of the injustices done to women. It is undeniable that the family in which each of us grows up has a deeply formative influence on us—on the kind of persons we want to be as well as the kind of persons we are.<sup>16</sup> This is one of the reasons why one *cannot* reasonably leave the family out of "the basic structure of society," to which the principles of justice are to apply. Equality of opportunity to become what we want to be would be enhanced in two important ways by the development of families without gender and by the public policies necessary to support their development. First, the growing gap between the economic well-being of children in single-parent and those in two-parent families would be reduced. Children in single-parent families would benefit significantly if fathers were held equally responsible for supporting their children, whether married to their mothers or not; if more mothers had sustained labor force attachment; if high-quality day care were subsidized; and if the workplace were designed to accommodate parenting. These children would be far less likely to spend their formative years in conditions of poverty, with one parent struggling to fulfill the functions of two. Their life chances would be significantly enhanced.

Second, children of both sexes in gender-free families would have (as some already have) much more opportunity for self-development free from sex-role expectations and sex-typed personalities than most do now. Girls and boys who grow up in highly traditional families, in which sex difference is re-

### Conclusion: Toward a Humanist Justice

garded as a determinant of everything from roles, responsibilities, and privileges to acceptable dress, speech, and modes of behavior, clearly have far less freedom to develop into whatever kind of person they want to be than do those who are raised without such constraints. It is too early for us to know a lot about the developmental outcomes and life choices of children who are equally parented by mothers and fathers, since the practice is still so recent and so rare. Persuasive theories such as Chodorow's, however, would lead us to expect much less differentiation between the sexes to result from truly shared parenting.<sup>17</sup> Even now, in most cases without men's equal fathering, both the daughters and the sons of wage-working mothers have been found to have a more positive view of women and less rigid views of sex roles; the daughters (like their mothers) tend to have greater self-esteem and a more positive view of themselves as workers, and the sons, to expect equality and shared roles in their own future marriages.<sup>18</sup> We might well expect that with mothers in the labor force *and* with fathers as equal parents, children's attitudes and psychologies will become even less correlated with their sex. In a very crucial sense, their opportunities to become the persons they want to be will be enlarged.

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

To the extent that gender is de-emphasized in our nurturing practices, this capacity would seem to be enhanced, for two reasons. First, if female primary

parenting leads, as it seems to, to less distinct ego boundaries and greater capacity for empathy in female children, and to a greater tendency to self-definition and abstraction in males, then might we not expect to find the two capacities better combined in children of both sexes who are reared by parents of both sexes? Second, the experience of *being* nurturers, throughout a significant portion of our lives, also seems likely to result in an increase in empathy, and in the combination of personal moral capacities, fusing feelings with reason, that just citizens need.<sup>19</sup>

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.<sup>20</sup> Some, such as subsidized high-quality day care, would be expensive in themselves, but also might soon be offset by other savings, since they would enable those who would otherwise be full-time child carers to be at least part-time workers.

All in all, it seems highly unlikely that the *long-term* costs of such programs—even if we count only monetary costs, not costs in human terms—would outweigh the long-term benefits. In many cases, the cycle of poverty could be broken—and children enabled to escape from, or to avoid falling into, it—through a much better early start in life.<sup>21</sup> But even if my suggestions would cost, and cost a lot, we have to ask: How much do we care about the injustices of gender? How much do we care that women who have spent the better part of their lives nurturing others can be discarded like used goods? How ashamed are we that one-quarter of our children, in one of the richest countries in the world, live in poverty? How much do we care that those who raise children, *because* of this choice, have restricted opportunities to develop the rest of their potential, and very little influence on society's values and direction? How much do we care that the family, our most intimate social grouping, is often a school of day-to-day injustice? How much do we *want* the just families that will produce the kind of citizens we need if we are ever to achieve a just society?