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# Liberty, Gender, and the Family

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## Liberty, Gender, and the Family

*Jennifer McKittrick*

DISCUSSIONS OF JUSTICE within the classical liberal, libertarian tradition have been universalist. They have aspired to apply to any human community, whatever the makeup of its membership.

Certainly some feminists have taken issue with this, arguing that the classical liberal, libertarian understanding of justice fails to address the concerns of women, indeed, does women an injustice. Among these we find Susan Moller Okin, and it will be my task in this essay to explore whether Okin's criticism is well founded.

Susan Moller Okin's *Justice, Gender, and the Family* is a landmark feminist discussion of distributive justice that raises issues no political philosophy should ignore.<sup>1</sup> However, libertarians have tended to ignore it. That is perhaps not surprising as Okin

1. Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989).

would have us believe that libertarian feminism is incoherent. Some libertarians seem to agree, leading one to believe that liberty is incompatible with justice for women. Perhaps libertarians and feminists agree on the “facts,” but disagree on the values. Whereas the feminist is willing to sacrifice liberty for justice, the libertarian is willing to sacrifice justice for liberty. Although the libertarian might object to this characterization on the grounds that the demands of justice would be met by a libertarian scheme, the feminist can equally object that the “liberty” she is willing to sacrifice means liberty for men and domestic servitude for women. Okin finds libertarianism problematic for two reasons: its philosophical foundations and its unjust consequences for women. (She focuses, as will I, on women in quasi-democratic industrial societies.) I will argue, contra Okin, that neither the philosophical foundations nor the possible implications of libertarianism are as problematic for feminism as she claims.

#### 1. OWNERSHIP

One of the philosophical foundations that Okin attacks is libertarian theories of property. Justification of a right to property and of a Lockean labor theory of property acquisition is part of the classical liberal tradition, taken up by Nozick in *Anarchy, State, and Utopia*.<sup>2</sup> Okin’s most explicit attack on libertarianism in *Justice, Gender, and the Family* is a reductio ad absurdum of Nozick’s views about property. Okin argues that absurd consequences follow from the Lockean labor-mixing theory of property acquisition and the observation that mothers produce offspring via labor.<sup>3</sup> The reductio ad absurdum may be summarized as follows:

2. Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974).

3. Okin, 79–85.

1. You come to own something by mixing your labor with it.
2. Women mix their labor with genetic materials and nutrients, and thereby produce offspring.
3. Therefore, mothers own their offspring.

Add to that the view that you retain ownership until you voluntarily transfer it, and it turns out that we are our mother's slaves.

How might the libertarian reply? As an initial observation, this problem has little to do with the labor theory of property acquisition, which is a theory about how a person may come to own something that was previously *unowned*. A pregnant woman "mixes her labor" with things that are inside her own body. If we grant, as Okin seems to, some degree of self-ownership, it would be highly atypical for something inside of a woman's body not to be owned by anybody. Arguably, a woman owns her uterus, the food she eats, and the male genetic material that is freely "donated." An effortless transformation of these materials into a child would raise the same issues. So targeting the labor theory of property acquisition is off the mark, despite the linguistic connection to the "labor" of childbirth. What is really at issue is the view that owning the parts or raw materials entails a right to own whatever those parts become. However, that is not an explicit tenet of the Lockean/Nozickian view of ownership (though it is plausible that they would accept it, or something like it).

Also note that Okin is assuming a particular theory of diachronic identity that may be rejected.<sup>4</sup> An adult human being is composed of entirely different physical matter than the fetus his or her mother carried. Even if the mother owned the mat-

4. For more on personal identity, see Derek Parfit, *Reasons and Persons* (Oxford: Clarendon Press, 1984); John Perry, *Personal Identity* (Berkeley: University of California Press, 1975), pt. 3.

ter that became the fetus, it is not clear that she ever owned anything numerically identical to any subsequent adult. Or, if you believe a human being has an essential nonphysical part that accounts for diachronic identity, the fact that the mother contributed physical matter would be insufficient to establish ownership. Along these lines, a popular poet advises mothers that “[children] come through you but not from you.”<sup>5</sup> However, if you believe that human beings are made of matter and that they sustain the same identity from the womb to adulthood and that you hold unrestricted rights of ownership, including rights to own people and to dispose of owned property at will, then you are vulnerable to this problem Okin raises, and you may in the end justify a matriarchal slave state.

However, libertarians need not be committed to such views, including those about ownership. One could accept a Lockean view of how one comes to own unowned nonsentient property, yet not extend that to owning humans. One could consistently hold that there are certain kinds of beings that cannot legitimately be owned. Rational agents seem a likely candidate. Along these lines, one might hold that if a human being mixed his labor with silicon and electronic elements and built an artificial intelligence that rose to the level of a rational agent, that claims of ownership would become problematic. The same reasoning would justify denying women ownership of their adult offspring.

This still leaves potentially problematic implications for newborn, prerational infants. Adding the above restriction leaves open the possibility that mothers own their newborn infants and may modify, sell, or dispose of them, as any other piece of property, prior to the point at which they become

5. Kahlil Gibran, “Children,” in *The Prophet* (New York: Alfred A. Knopf, 1973).

rational agents. However, even if mothers did, in some sense, own their very young children (and the cluster of parental rights seems not entirely unlike ownership), issues of ownership do not answer all moral questions. Most people believe that it is possible for humans to own animals *and* that torturing your puppy for fun is wrong. Some libertarians have more complex, nuanced theories of ownership than Okin gives them credit for. Libertarians are not committed to the view that the right to own property entails that people can acquire complete dominion over absolutely anything that can be retained through any possible transformation. Nozick himself points out a number of problems with that absolutist approach, notes the complexities involved, and leaves many questions unanswered.<sup>6</sup> So, Lockean theories of property necessarily have the consequences Okin envisions.

## II. CONTRACTARIAN FOUNDATIONS

A second philosophical foundation of libertarianism that Okin attacks is contractarianism. Broadly speaking, a contractarian approach attempts to justify social norms by reference to contracts or mutual agreements. Players on the political scene are perceived as independent adults who make rational political decisions based upon self-interest. Individuals have no commitments or obligations to others but for the ones that they choose to take on.

As Okin points out, if the parties to the contract are all independent adults acting on rational self-interest, the relevant population apparently includes neither mothers nor children. And if it doesn't, then either it is not self-sustaining or it dawns on caregivers like a natural resource. In reality, one or more

6. Nozick, 174–182.

people are required to take each political actor from birth to this relatively self-sufficient state. If we tacitly assume that people exist who bear and raise children, then the success of our theory depends on the fact that traditional women's work gets done. And furthermore, the theory depends on this caregiving work being accomplished in a way that yields independent individuals without commitments or obligations. Okin charges that contractarians take it for granted that before, during, and after these mutually advantageous agreements are made, there are women around being caregivers.

By assuming, without mentioning, that there is someone available whose responsibility it is to raise children, political philosophers leave the necessity of caregiving outside consideration, outside the realm of justice. Ironically, although the whole theory is set up to justify people's obligations by what they overtly, implicitly, or hypothetically agreed to, it is expected that domestic obligations will be filled, without even pondering the question of whether any rational, self-interested individual did or would agree to take on the responsibility of raising children. If the self-sufficient, independent political actor is not a reality, then we need to clarify what role said actor is playing in political theory. Or if these real-world facts about human life are not relevant, then it is not clear that a political philosophy for "mushroom men" is relevant for real-world humans.<sup>7</sup>

A libertarian may respond by offering a modified contractarianism, which begins by asking, "Are all of the traditional assumptions about political actors really necessary?" What if we assume that players come to the table with histories, ties,

7. Mushroom men spring from the ground with self-interested rationality; Mark A. Lutz and Kenneth Lux, "Commenting on Gendered Economics: Mushroom Men, Straw Men, and Real Persons," in *Review of Social Economy* 53:1 (Spring 1995), 121–131.

interdependencies, and a debt of gratitude to their parents? What if, instead of taking it for granted that women's work will get done, we acknowledge that child care and other domestic work are among the issues that are on the table for determining mutually advantageous arrangements? It is not clear that these assumptions would doom a contractarian project. The agreements people would make under these conditions would be worth considering.

Okin herself offers a modified Rawlsian contractarianism. According to Rawlsian contractarianism, just political arrangements are those that would be chosen by individuals who were ignorant about their particular assets (social status, wealth, talents, etc.). That way, no one would be able to skew social arrangements to their particular advantage. Okin would include, where Rawls originally does not, that the hypothetical negotiators would be ignorant about their own genders.<sup>8</sup> That way, gendered division of labor would not be accepted unless the negotiators would be truly willing to fill any of the gender roles available. Rawls theorizes that his negotiators would agree to the two principles of justice:

1. "Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others";
2. "Social and economic inequalities are to be arranged so that they are:
  - a. to the greatest benefit to the least advantaged;
  - b. attached to offices and positions open to all under conditions of fair and equal opportunity."<sup>9</sup>

Okin essentially agrees with these principles of justice, but she

8. Okin, 101–109.

9. John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 60.



takes issue with Rawls regarding their interpretation and implementation. But like Rawls, Okin sees their implications as more liberal than libertarian.

However, Rawls says his principle of liberty trumps the difference principle when there is a conflict, and a thoroughgoing reading of the principle of liberty might generate some fairly libertarian conclusions. In his post-*Theory of Justice* work, Rawls waters down the principle of liberty, in part to avoid just this sort of result, but it is not clear that he is justified in doing so.<sup>10</sup> Moreover, even if we let the difference principle go untrumped, it is not clear that the result must be contrary to libertarianism or economic efficiency. Rawls himself states, "It should be noted that the difference principle is compatible with the principle of efficiency."<sup>11</sup> If libertarian economic theory is correct—a factual question independent of ethical considerations—then a libertarian society would in fact be more likely than any other system to work out to the advantage of the least well off.

Another possible response to Okin is to offer a noncontractarian foundation for libertarianism, such as a utilitarian, Aristotelian foundation. However, as any reader of Okin is aware, she has objections to virtually every political philosophical tradition, so there is no easy escape from her feminist critique.

### III. CONSEQUENTIALIST ARGUMENTS

Okin's greatest challenge to libertarianism is not directed against libertarianism per se yet it entails that libertarianism is unacceptable because of the consequences it would have for

10. John Rawls, *Political Liberalism* (New York: Columbia University Press, 1993).

11. Rawls, *Theory of Justice*, 70.

women and children.<sup>12</sup> According to Okin, our current extent of free association and contract and our current social practices leave women vulnerable to an extent that is incompatible with justice. So, according to Okin, restrictions of liberty are needed to achieve justice. If she is right, then a society based on libertarian principles would surely have unjust consequences. Individual men and women making voluntary rational choices in the situations in which they find themselves results in women being unfairly disadvantaged.

Okin describes a cycle of inequality and vulnerability, which might be better characterized as a downward spiral for the individual woman. I will characterize this cycle in terms of a simple fictional story about a couple, Sue and Bob. They are a young couple of equal education. As often happens, Bob, being male, finds a job making somewhat more money than Sue. Sue's employer does not want to invest too much in Sue because chances are she will start a family and devote less energy to work or even quit. Meanwhile, Bob has a chance to transfer for a promotion. Sue does not get a transfer and would end up on the ground floor of a new company. However, the net household income would increase as a result of the move, so the move makes sense for the couple.

Then Bob and Sue decide to have children. Who should care for the children? If that question is even considered, it becomes clear that diverting Bob's energies from his career would severely diminish the family's resources, so it does not make sense for him to be the primary caregiver. Domestic help and day care would cost almost as much as Sue's salary. So even if they are not consciously thinking that mothers are better parents, given their social context and the fact that they both want children, it makes sense for Sue to take time off of work to devote to motherhood.

12. Okin, 134–169.

As a stay-at-home mother, Sue loses touch with her professional contacts and with developments in her field, whereas Bob gets another promotion. After the children get a little older, Sue tries to get her career back on track. She puts the children in day care several hours a week and works part time as an assistant to the person who holds her old job. Sue has little opportunity for advancement. She tries to increase her hours, but when her child is sick, she has to leave work. She cannot stay late because the day care closes at 5 P.M. She is not getting ahead as she had hoped, and the housework is piling up. Sue asks Bob for help with the children and around the house. He does not refuse, but mentions his professional responsibilities and little changes. Tensions rise in their relationship. Of course, if she does not like the arrangement, she can leave. She contemplates the personal and financial hardships that such an action would involve and decides that pursuing her career is just not worth it. Besides, now Bob is making enough to support the whole family.

Then one day, Bob comes home and announces *he* is leaving Sue (for someone who is more fun and less demanding). Sue goes back to work full time, out of necessity. She and her children move into an apartment, and now she has to pay for full-time day care out of her meager salary and nominal child support. Bob, on the other hand, has a convenient visitation arrangement and more spending money.

The moral of the story is that the reasonable choices Bob and Sue made together amounted to investing in Bob's personal capital, improving his exit options, and increasing his power in the relationship. Meanwhile, Sue invested in her family and has little to show for it. Although everyone's story is different, the pattern is all too common. Women are caught in a cycle of inequality at work and at home. The expectation that women will bear greater domestic responsibilities leads to in-

equalities in the work place, which leads to women bearing greater domestic responsibilities, which exacerbate inequalities in the work place, and so on.

Okin locates the major obstacles to women's equality in the gendered division of labor in the home and in the related structure of the workplace, which leaves no time to meet substantial domestic responsibilities. Full-time careers were designed for people with wives at home. This makes freedom from child-care responsibilities a practical prerequisite for professional success. Consequently, people in positions of power tend to be people who are not particularly sensitive to the needs of children and caregivers.

I think Okin has identified a legitimate social problem that arises from people making seemingly autonomous choices. Okin asks: "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, [and] there is no current consensus on many aspects of gender. . . ." <sup>13</sup> She acknowledges that there is something of value at stake. But apparently, it is a value worth sacrificing: "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*" (emphasis added). <sup>14</sup> Furthermore, Okin seems to think that being governed by principles of justice means being governed by the state.

The fact that Okin thinks that justice requires state restrictions on liberty becomes clear when we look at some of her specific policy recommendations for dealing with the cycle of

13. Okin, 171.

14. Ibid.

inequality. According to Okin, employers should be “required to” (“mandated,” “must”): provide mothers pregnancy and childbirth leave; provide mothers and fathers parental leave during the post-birth months; allow workers with children ages seven and under to work flexible part-time hours with full benefits; allow parents of children with health problems or disabilities to work flexible hours; provide high-quality onsite day care for children from infancy to school age; and restructure any demands that conflict with parenthood during child-bearing years. The last is particularly important in academic and legal careers, where the most pressing career challenges traditionally occur when a person is between ages twenty-five and thirty-five. If an employer does not make these provisions, direct government subsidies should be given to lower-income parents with children in day care. And schools should be required to provide high-quality after-school programs.<sup>15</sup> Perhaps Okin’s most original suggestion is the following: If a couple chooses a traditional division of labor within their marriage, both partners should have equal legal entitlement to all earnings—employers must issue two paychecks equally divided between the employee and his partner.<sup>16</sup>

#### IV. LIBERTARIAN RESPONSES

Onsite day care and flexible hours would be great for working parents, and officially splitting the paycheck of the wage earning partner might be an excellent arrangement for some couples. However, mandating or requiring these practices would interfere with self-determination of the terms of our own associations, agreements, and contracts. Okin’s recommendations would place substantial burdens on taxpayers, businesses,

15. *Ibid.*, 176–177.

16. *Ibid.*, 181.

and employers and would probably have various unwanted consequences. For example, new detection and enforcement mechanisms would be required to oversee marital financial arrangements. So perhaps Okin's recommendations are too interventionist, restrictive, or impractical—the cure is worse than the disease.

But even if that is so, Okin's diagnosis still stands, and at this point, it seems to me that libertarians have basically two ways to respond. One is to grant that under the present gender system, people making free choices about work and family results in a situation in which women are "differently advantaged" and that it would require substantial interference with personal liberty to alter this situation. But, the libertarian argues, such interferences are unacceptable. So, unfortunately for women, that is just the way it is. And unfortunately, many libertarians seem to have this response. They hail the traditional gendered division of labor as marvelously efficient or "natural" or acquiesce to it as inevitable or beyond question, and they seem oblivious or insensitive to the vulnerabilities it creates. A classic example of this is John Stuart Mill, whose *On Liberty* places him within the classical liberal tradition.<sup>17</sup> In *The Subjection of Women*, Mill spends one hundred pages brilliantly arguing that we have no reason to believe that women and men have different natural abilities, nor that gender inequalities are justifiable.<sup>18</sup> Furthermore, he is aware that earning power can translate into dominance. Mill says, "There will naturally also be a more potential voice on the side, whichever it is, that brings the means of support."<sup>19</sup> However, as forward-looking

17. John Stuart Mill, *On Liberty* (New York: Penguin Books, 1975).

18. John Stuart Mill, *The Subjection of Women* (New York: Prometheus Books, 1986).

19. Mill, *Subjection*, 46.

as his views on women were, he could not envision any alternative to the traditional gendered division of labor. Mill says:

When the support of the family depends . . . on the earnings, the common arrangement, by which the man earns the income and the wife superintends the domestic expenditures, seems to me in general the most suitable division of labor between the two persons.<sup>20</sup>

Shortly after, he says more strongly, "It is not . . . a desirable custom that the wife should contribute by her labor to the income of the family . . ." because the children would not be properly cared for.<sup>21</sup> For Mill, getting married and having children is a career choice for a woman. Mill says:

Like a man when he chooses a profession, so, when a woman marries, it may in general be understood that she makes a choice of the management of a household, and the bringing up of a family, as the first call upon her exertions, during as many years of her life as may be required for the purpose; and that she renounces . . . all which are not consistent with the requirements of this.<sup>22</sup>

But getting married and having children is not a career choice for a man. The husband has a wage-earning career *and* a family. Mill inexplicably adopts a double standard here, which he so eloquently rejects in every other context.

One might say that despite being ahead of his time in many ways, Mill was a product of his day. But contemporary libertarians seem to have the same mental block. Once, at a Liberty Fund conference, a participant asked, "Why do married women work?" I retorted, "Why do you ask why married *women* work?" He replied, "Because I just assumed that single

20. Ibid., 53.

21. Ibid.

22. Ibid., 54.

women would have to work.” I was dumbfounded, trying to process this nonsequitur. Then I realized he had assumed the relevant contrast class of married women was single women, and he could not conceive of anyone asking “why do married men work?” even when prompted. The moment passed, and it seemed that no one in the room grasped the import of my question.

If libertarianism is unconcerned about the traditional gendered division of labor and all of the vulnerability for women that it entails, then it *should* be shunned by feminists. Some libertarians might say “good riddance,” but the point is that they are apparently content with a system that does not provide equal opportunities for women, which seems to be in tension with the Libertarian Party platform:

As Libertarians, we seek a world of liberty; a world in which all individuals are sovereign over their own lives, and no one is forced to sacrifice his or her values for the benefit of others.<sup>23</sup>

A patriarchal world is not one in which women are sovereign over their own lives. And although overt physical force is not always used, the gender system promotes and depends on the expectation that women will sacrifice their values for the benefit of others.

So, the first line of response is woefully inadequate, for it is hardly a response at all. It amounts to basically being oblivious or turning a blind eye to the issues Okin raises. If that is the best that libertarians can do, they are proper subjects of feminist criticism. A better libertarian approach would be to acknowledge the Okin has identified some serious difficulties, but that state intervention is neither the only nor the best way

23. National Platform of the Libertarian Party, [http://www.lp.org/issues/platform\\_all.shtml](http://www.lp.org/issues/platform_all.shtml).



to deal with them. In order to do this, however, libertarians have to offer other strategies for dealing with the cycle of inequality. The problem, for rhetorical purposes anyway, is that there is not, nor can there be, a grand libertarian plan for coordinating and changing behavior, of employers and individuals, both in their private and professional lives. Perhaps educational, consciousness-raising programs could be initiated, alerting women to the risks of vulnerability by marriage. However, a great deal of the impetus for change needs to come from the individual and at the grassroots level.

Again, the difficulties Okin brings to our attention are very real, and it does not diminish their significance at all to suggest that different people can have different and creative ways of dealing with them in their own lives. Okin seems to have greater confidence in the ability of government to manage women's lives than in the ability of women to protect their own interests. Perhaps historically women have been unable to effectively protect their interests, but the failure of governments to protect the interests of women is much worse. To offer alternatives, libertarians can brainstorm about possible strategies that individuals may employ, not because women cannot think for themselves, but to show that there are ways to combat the cycle of inequality without restricting liberty. These are practical, even mundane suggestions, but Okin presents what is essentially a practical problem—how can a woman be a parent without becoming economically dependent and vulnerable?

Different particular solutions are suitable for different individual circumstances, opportunities and aspirations. Some people can work out mutually advantageous arrangements with employers, individually or collectively. Some employers find, for reasons other than coercion, that it is in their interest to enable their employees to meet other commitments. In some careers, women can freelance or work at home. Careers

in education are particularly suitable for someone who wants to raise children, since the hours can accommodate caring for school-age children. Nursing is another profession with flexible hours, and pays well with good benefits, even for part-time employment.

Another possible strategy is to invest in one's own education while one's children are young. Colleges and universities offer courses at various hours, and it is usually possible to coordinate with daycare or elementary school schedules. A parent can go less than full time depending on her other commitments, and she can study and write at home at opportune moments. (I speak from experience: I began my higher education when my son was three, and he attended my public Ph.D. defense when he was fifteen.)

However, we need to stop thinking of balancing work and family as just a women's issue and start thinking of it as a parent's issue. That means getting rid of the assumption that the woman's responsibility is domestic and the man's responsibility is financial. That is not to say that in the best possible world, all parents have careers.

Being free of the necessity to earn income is often a desirable circumstance for anyone, especially for a parent of a young child. But it is important that parents work out an arrangement to minimize vulnerability for the non-wage-earning parent.

## V. MARRIAGE CONTRACTS

Okin laments the current state of family law, which puts women and children at a disadvantage.<sup>24</sup> An alternative would be to allow people to work out their own arrangements. For-

24. Okin, 163.

mally dividing the wage-earner's paycheck is one such possible arrangement, but other types of marriage contracts may be mutually advantageous for different people. However, Okin is suspicious of independent marriage contracts. One might object to marriage contracts on the grounds that they make what should be a romantic union into a business transaction. However, that is not Okin's worry. She has no qualms about bringing considerations of justice into the private sphere and worries that appeals to emotion and unconditional giving are tools that consign women to their traditional gender roles. Instead, Okin's worry about the idea that couples can make their own marriage contracts is that they take insufficient account of the history of gender in our culture, our own psychologies, the present inequalities between the sexes, and the well-being of any children involved at any point.<sup>25</sup> The agreement reached by the parents may put subsequent children at risk, children who had no opportunity to give their consent. She notes that justice is not always enhanced by freedom of contract if the individuals involved are in unequal positions to start with.

With regard to the point about children, the fact is that children are always born into circumstances they did not ask for. Some of these circumstances are fortunate, and some are not. There may be various ways extra-parental forces might want to protect children from circumstances beyond their control, but forbidding parents from forming the kind of relationships they want to have hardly seems the most effective strategy or the most pressing concern when it comes to protecting children against the contingencies of life. Ensuring more substantial child support in the event of divorce pales in comparison to ending physical abuse and sexual molestation perpetrated against children.

25. *Ibid.*, 173.

But a more important question is, why does Okin think that women are at a disadvantage with respect to bargaining in a marriage contract? Okin's reasons seem to be that women have less earning power and that women are expected to, and have been conditioned to, accept contracts on unequal terms. However, expectations change and consciousness rises. Although the wage gap does need to be closed, its current existence need not prevent women from making advantageous arrangements. It should also be pointed out that even women in relatively traditional marriages often manage the household money and make major financial decisions. Power dynamics in relationships are not always determined simply by relative earning power.

Okin notes that men are better off financially after a divorce.<sup>26</sup> Although she is wise to draw our attention to the financial power dynamics within families, if money were all that mattered, then men would have no reason to stay married. Yet many of them do. Many men apparently get something out of marriage that is more important than a higher standard of living for themselves. Studies have shown that married people are healthier.<sup>27</sup> Most men and women want to have children and benefit from a parental partnership. Most men want partners and families and are willing to sacrifice other things they value in order to have a stable family life.

So if men have at least as much to gain through marriage as women do, why would women be at a disadvantage with respect to bargaining for terms of a marriage contract? Is it because men will not get married unless it is on their terms? Or because if left on their own, women will continue to enter

26. Ibid., 161.

27. Linda Waite and Maggie Gallagher, *The Case for Marriage: Why Married People Are Happier, Healthier, and Better Off Financially* (New York: Doubleday, 2000).

into disadvantageous arrangements, oblivious to their own bargaining power? Although that is possible, it is not necessarily true. To have an unequal bargaining position, it is not enough that you start off with less. It also must be the case that you value making the bargain more than the other party does. For example, an employer may start off with more resources than a potential employee. However, if the employer wants to hire the applicant more than the applicant wants to work there, the employer has more to lose by not making the bargain. The applicant can hold out for a higher salary than the employer initially offered.

In the case of devising an individual marriage contract, why should women value "making the bargain" of marriage more than men do? Given Okin's picture of what traditional marriage has to offer women and men respectively, she should expect it to be the opposite. Unless women want to get married more than men do, it is not clear why women should settle for arrangements that increase their vulnerability. When most careers were closed to women, they really were in an unequal bargaining position. Marriage was in many cases their only means of support. But given improved opportunities for women, they need not be financially dependent on men. Even with the current inequalities, many women are in a position to refuse a marriage that offers unequal terms once they come to recognize them as such. The key, I think, is recognizing them as such. While the desire for children is an additional incentive to marry, it is much easier for a woman than for a man to become a single parent, and it is not always worse than being a married parent.

## VI. CONCLUSION

None of these remarks should not be confused with those of the libertarian apologist, who says, in effect, "C'mon, girls, it's not so bad!" There are serious obstacles to gender equality in modern industrial societies, as Okin points out. And the problem is not merely a matter of equality, but also of avoiding harm and of vulnerability to harm. Perhaps we should be more optimistic than Okin that people can work out just outcomes for themselves. However, we should be less optimistic than Okin that our legislators can work out just outcomes for us. Recent political trends do not inspire confidence.

If sexist attitudes are ingrained enough to make nongovernmental solutions unworkable, it is hard to see why they would not make governmental solutions equally unworkable. As Okin points out, there is every reason to believe that those in charge of writing, interpreting, and applying laws will be products of the prevailing gender system. When we hand the government the power to set the terms of marriage and employment, we hand it to people who, by and large, have gotten where they are by not having to worry about "women's work." So although it is tempting to construe "the woman question" as a dilemma between liberty and equality, it is doubtful, in this instance at least, that sacrificing liberty will make us more equal. Those of us who worry about what has traditionally been women's work are in the best position to find ways of seeing that such work gets done without sacrificing other things we value.