

## **Feminism and Family Justice**

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In families in the U.S. headed by a man and woman living as husband and wife, men do more paid labor, on the average, and less of the unpaid labor in the home than women do. Husbands earn more income than wives, and are paid at higher rates. Moreover, husbands on the average contribute fewer hours of paid and unpaid labor combined than do their wives. The overall picture is that women's labor force participation has risen steadily for several decades, but married women still have more responsibility for the care of children than husbands, and lesser income-earning potential than their husbands. When marriages fail, as about half of them in the U.S. now do, women overwhelmingly assume physical custody of the children, and men's income increases while women's income plummets after divorce.<sup>1</sup>

Is the division of benefits and burdens between men and women within families a private matter or an issue of social justice? Feminists assert: the latter.<sup>2</sup> On the face of it, the feminist position on this issue is compelling. After all, a social norm stipulates that women ought to take more responsibility than men for childrearing and housework. The norm functions as an ideology that works to benefit men. When husbands and wives make choices that assign more of the traditional women's work to wives, they are often conforming to a social norm, not choosing freely--and the social norm might be changed. If men who marry tend to insist that their wives shall subordinate their career aspirations to their husbands' careers, a young woman anticipating marriage will have less incentive to develop career skills and more incentive to develop skills of attracting a man and to reconcile herself to the status of a subordinate wife who gives priority to housework and

other family members' needs. Having fewer marketable skills than her husband, a woman is then more dependent than her mate on the stability of the marriage for her financial security. This dependence puts her in a poor bargaining position when households allocate burdens and benefits. When marriages collapse, divorce laws in American jurisdictions typically require an equal division of property when the settlement is contested but often do not require the primary bread-winner, who is usually the male, to share the expected income stream from his earning power enhanced during the course of the marriage through sacrifices typically put forth by both partners. In this frequent scenario, the man exits the marriage with sole ownership of the enhanced earning power that both spouses worked to produce in anticipation of a future they would share.

The most straightforward approach to the issue of social justice within the family would be to include the family among the list of major social institutions that constitute (in John Rawls's words) the "basic structure of society," which assigns fundamental rights and duties to individuals and determines people's initial prospects in life. Rawls in *A Theory of Justice* takes this approach.<sup>3</sup> On this way of regarding the family, it is to be regulated by the principles of justice that regulate the basic structure of society, and the rights and duties and practices of family life are to be set so that they interact with other major institutions to affect people's life prospects in ways that conform to justice.

Feminist philosophers criticize Rawls for failing to follow through his initial resolve to apply principles of justice to family life.<sup>4</sup> But Rawls's failure to say much about justice in the family might be thought to reflect a sensible uneasiness about including the family within the public sphere subject to public regulation. One might reject the idea that family relations among competent adults should be subject to social regulation.

Provided that the organization of society were otherwise just, so that individuals received adequate nurturing and education during childhood and started adult life with fair shares

of resources, why not let individual choices to cohabit and order their private lives as they wish determine the shape of friendship and family relations? No doubt the public regulation of family life to protect the interests of children is legitimate in principle. But so far as the interests of adult men and women are concerned, why not confine the role of social justice to maintenance of a fair framework that facilitates private ordering among individuals (by enforcing contracts, prohibiting force, fraud, and aggression, and so on)? Granted, relations between spouses and lovers, like relations between friends, are often less than ideally fair. But this sort of unfairness might be deemed a private, not a public concern.

For at least three reasons, the social regulation of family life by principles of distributive justice is appropriate. First, just as in the case of individual market exchanges, the cumulative effects of many separate “private” marital decisions may significantly disadvantage some persons even if few transactions considered in isolation impose costs of such magnitude that they trigger justice concerns. Second, to a large extent the structure of marriage is already set by state regulation not individual choice. Individuals choose whether or not to marry, but many features of the arrangement are set by state law, so if their consequences are bad for women, this is clearly a problem for social justice to address. Also, as was mentioned, social norms also influence the course of family life, and the norms might be biased against women. Third, if society has a legitimate interest in regulating family life so as to protect the interests of children, by the same token society has a responsibility to ensure that the steps it takes on behalf of children do not have adverse and unjustifiable consequences for some group of adults such as women.

We can imagine a society in which income and access to other resources is perfectly just, according to your favorite theory of distributive justice, if the unit of distribution is stipulated to be the household and it is presumed that distribution within

households among adults and children is either equitable or beyond the purview of justice. But next imagine that the distribution of goods within households is strongly skewed in favor of men, so that by comparison with men, women suffer poor nutrition and higher morbidity and mortality, and have lesser opportunity to flourish in ways that everyone values. If we don't wish to be forced to deem this society ideally just, we must be prepared to explore the issue of justice within the family with a view to asserting norms of distributive justice that will constrain within-household practices.<sup>5</sup>

#### THE EQUAL SPLIT PROPOSAL

Consider then Susan Okin's recent proposal concerning justice within families. According to her, justice requires an "equal split" rule: within each marriage, husband and wife should share equally in paid labor, time devoted to childrearing, time devoted to household chores, the income from paid labor, and the entitlement to benefit from enhanced job skills or enhanced income potential that accrues to either spouse during the course of the marriage.<sup>6</sup>

To assess the proposal, one first needs to clarify how the split of burdens and benefits between husband and wife is to be measured. I interpret the proposal as requiring equality in each of the specified domains, so that putting in extra hours of paid labor would not offset putting in fewer hours of housework and childrearing in calculating whether a split is equal or not. I take it that the spirit of the proposal is resourcist rather than welfarist. That is to say, the chosen measure should register the personal resource contributions of the spouses rather than the cost to each party of making these contributions in terms of desire satisfaction or any other subjective currency. Beyond this point, I do not think that anything substantial for the purposes of this essay turns on exactly what measure is stipulated. I will suppose that housework and paid labor and childrearing are all to be measured by the number of hours of contribution, and income

shares and income potential by dollars per year on the assumption of full-time employment.<sup>7</sup>

I suppose that the spirit of the equal split proposal requires that equality of the relevant burdens and benefits between spouses be sustained continuously through time (or at least throughout short time intervals) for the duration of the relationship. That is to say, it would not satisfy the equal split norm if the husband oppressed the wife for twenty years of marriage, taking the lion's share of the benefits and the squirrel's share of the burdens, and then the roles reversed, with the wife oppressing the husband for the next twenty years of the marriage.

An initial qualification must be noted. Okin makes this proposal tentatively. She writes: "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" equal sharing.<sup>8</sup> Okin nowhere suggests that she would approve coercive enforcement of the equal split rule by state law. She does not indicate whether her unwillingness to endorse coercive enforcement stems from a belief that it would be counterproductive or from a belief that it would wrongfully restrict individual liberty. The latter construal of her moderate position sits uneasily with her claim that attaining equal split is a requirement of justice; because we usually think it a mark of justice obligations that it is acceptable, indeed morally desirable, to restrict individual liberty as need be to enforce them.

#### EQUAL SPLIT AND STRONG ANTIDISCRIMINATION

The equal split rule might be regarded as a deontological rule, the way some people view "Keep your promises!" or "Tell the truth!"--rules to be followed as morally valuable for their own sakes. Or equal split might be viewed as a means to a further goal. The former possibility is implausible. Even if it were supposed that there is a general obligation to render the distribution of resources among persons close to equal, why think that it is important to achieve equality of distribution with the persons you are

living with? Why a special obligation to equalize within the home, rather than to share so as to approach equality with one's neighbors (who may be worse off than one's spouse) or with the down-and-out of one's community, or distant poor strangers? My hunch is that most proponents of equal split would see it as a means to a goal and that the moral goal in view would be a principle along this line: It is morally wrong if one person is made worse off than others (has worse life prospects) just by the sheer contingency that she was born a woman rather than a man. Call this principle the Strong Antidiscrimination Principle. My suggestion then is that Okin is proposing equal split as a means to bring about a state of affairs in which the Strong Antidiscrimination Principle is satisfied.<sup>9</sup>

Strong Antidiscrimination is evidently a particular case of a more general principle. Here is a stab at the more general principle: Other things being equal, it is morally wrong to set social arrangements so that possession of a characteristic that is arbitrary from the moral point of view (such as sex, sexual orientation, skin color, or supposed race) causes the possessors to be significantly disadvantaged. In the ordinary course of life possession of arbitrary characteristics (being in the right place at the right time, producing a product for the market that happens to catch a wave of consumer response) gives rise to good and bad outcomes by sheer luck that it would be bad policy to try to counteract, so interpreting the "other things being equal" and "arbitrary from the moral point of view" clauses so that the principle emerges as both substantive and credible will be a tricky matter. In this essay I leave this issue aside, and simply accept Strong Antidiscrimination for the sake of the argument.<sup>10</sup> Surely the norm will appeal to many readers, so tracing its implications for policy should be of some interest. Strong Antidiscrimination can be interpreted in at least two different ways, as follows:

1. It is morally wrong for social arrangements to be set so that the mere fact that one happens to be born a woman (or a man) renders it the case that one's ex

ante life prospects (from birth) are worse than if one had been born a man (a woman).

2. It is morally wrong for social arrangements to be set so that one comes to suffer significant disadvantage in the course of one's life by being singled out for bad treatment just because one happens to be male or female.

I have interpreted equal split as a proposed means to attaining satisfaction of Strong Antidiscrimination. The question then arises, what would be the likely consequences of introducing the equal split rule in a society like our own? Would equal split be an effective means to Strong Antidiscrimination?

It is true that if equal split were introduced today, some women who suffer the short end of an unequal split would benefit from imposition of equal split. This might occur because their current male mates would in conforming to the equal split rule go along with arrangements that would improve the woman's lot. In other cases women not yet married might benefit from imposition of equal split in that the terms they could expect from their anticipated mates would shift in their favor.

But these would just be some of many possible cases. Introduction of equal split would require some married women to revert to equal split instead of continuing in unequal split arrangements that are to their advantage, compared to what they could expect under equal split. Introduction of equal split would render some marriages unstable, prompting exit from the marriage by the man or the woman. If the man is the one to exit, this collapse of the marriage might render the wife worse off. Introduction of equal split might deter some from entering marriage (and attract others). Introduction of equal split might well alter the distribution of partners, because some marriages that would have formed on an unequal split basis would not form under a rule of equal split, and the sorting of men and women into couples would proceed on a different basis.

Two likely effects of the introduction of equal split might be troublesome for the thought that this shift would definitely improve the condition of women and also be morally desirable. Equal split might deter men from entering marriage, and encourage informal cohabitation arrangements, and the absence of mutual commitment in these arrangements might be more disadvantageous to women than to men. Also, equal split might strengthen the already strong tendency to assortative mating of advantaged with advantaged and disadvantaged with disadvantaged. If equal split is required within relationships, people might be less willing than at present to undertake partnerships with potential mates who have lesser potential earning capacity than they have. On any plausible egalitarian view, a heightened tendency to assortative mating would be undesirable. (This last point does not express a doubt that equal split would promote the attainment of Strong Antidiscrimination, but instead worries that even if it did, it might do so in a way that threatens other and more fundamental values.)

The speculations above are no substitute for analysis. The point is that Okin and any other advocate of equal split owes us a clear explanation of why we should think that equal split would improve the condition of women and stimulate progress toward Strong Antidiscrimination. I would not deny that equal split might yet be an effective means toward social justice (cf. affirmative action policy). I would just like to see the means-end argument spelled out.

Notice that whether or not it is an effective means to Strong Antidiscrimination, equal split is not required for its satisfaction. For we can imagine a society in which within each marriage, paid labor, unpaid labor, childrearing, the income from paid labor and so on are divided unequally. Unequal splits prevail in every marriage. These inequalities reflect the unequal bargaining strengths of particular men and women and the heterogeneous tastes and talents of individual spouses. But on the average in this society there would be an equal split. Taking the aggregate of married men and married



women, we find that overall they share equally in paid labor, unpaid labor, and the rest. Let us call the society so characterized the statistically equal split society. When society is statistically equal split, men and women are equally likely to be the primary breadwinner in a family, the primary homemaker, the primary caretaker of children. In a sense the society is androgynous. One could not predict from knowledge of persons' sex what their share of the benefits and burdens of social cooperation is likely to be or what role they are likely to play in the family division of roles and responsibilities.

The existence of a statistical equal split in a society does not guarantee what we would intuitively regard as fairness inside families. For the statistically equal split could come about because men exploit women terribly in one half of marriages and women exploit men terribly in the other half of marriages (the degree of exploitation being the same in each case). In this society of balanced war between the sexes, version 1 of the Strong Antidiscrimination principle would be satisfied, because being born a woman rather than a man would not affect one's life prospects. Yet family life would be inadequate from the standpoint of justice. Version 2 of Strong Antidiscrimination would be violated, because in some situations being of one sex or the other causes one to be arbitrarily singled out for significant bad treatment (we suppose that in the balanced battle of the sexes society, spouses impose mistreatment on each other that they would not inflict on their same-sex friends and acquaintances).

Despite the possibility of balanced war between the sexes, it remains the case that a society could satisfy both versions of Strong Antidiscrimination by way of becoming statistically equal split without having even a single actual equal split within any household. Many critics who regard the existing distribution of paid and unpaid labor among adult members of families as inequitable believe that in the absence of (1) unfair bargaining advantages that accrue to men in a male-dominated society, and which they exploit in their dealings with spouses and the labor market, and (2) a stunting of

women's preferences and ambitions that is also an artefact of a sexually unequal society, men and women on the average would manifest similar relative preferences for productive labor (paid employment and self-employment) and reproductive labor (childrearing and housework). Moreover, with the exception of labor that calls for special sex-linked physical characteristics (e.g., childbearing), men and women on the average would tend to be equally talented at various types of marketable services and reproductive labor. If these critics' beliefs are correct, then we would expect that in a sexually egalitarian society in which (1) and (2) have disappeared, and in which the tendency for the effects of past inequality to be reproduced from generation to generation is effectively offset, we would find many different sharing arrangements sustained by couples, and no tendency toward one uniform arrangement along the lines of equal split, but the pattern would be equal sharing in the aggregate (i.e., a statistically equal split).

#### EQUAL SPLIT VERSUS THE PARETO NORM

The absence of equal split within each family in the statistically equal split society would not imply that family life operates in an intuitively unfair way. In a society quite lacking in hostility between men and women or the will to mistreat members of the opposite sex, where statistically equal split prevails and men and women enjoy equal life prospects on the average, one would expect to find innocent unequal splits within many marriages. If a man and woman differ in their tastes and talents with respect to paid labor, childrearing, and housework, there will be in general many deviations from equal split that would be better for both parties than equal split. For example, if I am skilled at laundering and child care and enjoy these forms of work but my income-earning capacity is slight, while my wife is a cardiologist who hates housework, many deviations from an equal split arrangement involving my doing more laundering and child care and my wife

doing more paid labor and controlling more of the income from paid labor would be better for both of us. But if inequality makes everyone better off, why object to it?

This rhetorical question introduces a decisive objection to equal split, regarded as a component of the ideal of a just society. Equal split would massively violate a minimal but fundamental principle of fairness, the Pareto Norm, which holds it is unfair to sustain a state of affairs which can be altered by making someone better off without making anyone worse off. The Pareto Norm requires that if such a state of affairs exists, we should eliminate it either by improving the condition of the person who is now worse off than he might be at no cost to others, or by introducing some altogether new distribution in which no one could be made better off at no cost to others. The Pareto norm is a weak justice requirement, in the sense that many different arrangements, including many obnoxious arrangements, would satisfy it, and surely other distributional norms must be met in addition to it, in any society we would recognize as just in its distributive arrangements. But since Pareto is necessary for justice, in my view the equal split rule is not part of the ideal of a sexually just society and should certainly not be enforced in such a society. (This last formulation is meant to leave open the issue whether in our unjust circumstances, equal split might be a means to a better state of society, though not ideal in its own terms.)

To this point my discussion of the equal split proposal has pressed three claims: (1) Equal split may not be an effective means toward the attainment of Strong Antidiscrimination. Whether this is so is an empirical issue, and supporters of equal split have not offered evidence in its favor. (2) As the possibility of a statistically equal split society makes plain, enforcement of equal split is not needed to satisfy the Strong Antidiscrimination norm. (3) At any rate, equal split is per se unjust, because upholding it would violate the Pareto Norm.

This dismissal of equal split might prompt several objections well worth exploring.

One might deny that unequal splits are harmless by claiming that when one couple agrees on an unequal-split arrangement, that agreement generates negative consequences for persons who have not consented to the arrangement. The most plausible negative externality of that sort I can envisage is reinforcement of the ideology of separate spheres. When one woman accepts an unequal split to her advantage, that renders it more difficult for other women to bargain successfully to an equal split to their advantage. The acceptance of a homemaker role by one woman increases the general expectation that women will accept a domestic division of labor.

I doubt that the psychic externality postulated here is significant enough to support enforcement of the equal-split rule even if all the claims in the paragraph just above are accepted. In general, such considerations are weak reasons for establishing a social norm that would prohibit some people's innocent and most advantageous arrangements. It would be better to promote tolerance of behavior that deviates from the constricting pattern of cultural expectations. The true problem here is that there is currently in effect a strong social norm that rules most people's behavior even though it is increasingly challenged in public discourse, a social norm that demands acceptance of homemaker childrearer roles by working and nonworking wives alike. It is one thing to use schools, laws, and other arms of state power to break down the established sexist norm. It is quite a different matter to establish a new norm, equal split. One can favor the former while opposing the latter.

Another objection against the idea that unequal splits are harmless points to their effects on children. Okin recommends equal split not just for its consequences for women. She also believes that equal split would improve the rearing of children. She thinks that being cared for equally by both of one's parents helps develop the stereotypically masculine and feminine traits in children of both sexes, and that developing both sorts of traits in all children is good for them. She also believes that

children will not acquire a proper sense of justice if when young they observe an uneven split in their family which in effect makes the mother the servant of the husband and the children. This causes both male and female children to grow up believing that women's proper major role is serving men. However, Okin's position here seems to rest on a fragile psychological conjecture. Why cannot two female parents (as in a lesbian family) or two male parents (as in a gay family) or one parent (as in a single-parent family) do a good job of nurturing and raising a child? If they can, then it is unclear why it is not possible for one parent within a standard marriage to be the primary parent without harming the children. Okin's position if taken seriously would seem to imply that the society should require that children be raised only in standard two-parent families with childrearing equally shared. The argument that mandates equal split also seems to mandate intolerance.

A more modest version of Okin's defense of equal split on grounds of harms to children from unequal split arrangements would urge that unequal splits are unjust, and will be salient in the mind of the child growing up in a family that displays unequal split, and will tend to inhibit the development in the child of norms of reciprocity and a sense of fair play that would enable the child to develop into a citizen with a disposition to be just. On this account, whether the child is raised by heterosexual or nonheterosexual parents, and whether the child is raised by two parents or guardians, one, or several, what matters for the child's moral development is that she not be raised in a family that is unjust in its household distributive practices. This version of the argument avoids the implication that each child must be raised equally by one male and one female in a nuclear family arrangement. But in the present context it simply begs the question by flatly asserting that unequal splits are unjust instead of arguing to that conclusion.

A second possible response to the conflict between equal split and the Pareto Norm is to insist that equal split is a requirement of justice which takes precedence over

mere efficiency, the value asserted by Pareto. John Rawls observes, “Justice is the first virtue of social institutions. . . laws and institutions no matter how efficient and well-arranged must be reformed or abolished if they are unjust.”<sup>11</sup> But in a context where justice consists in the fair distribution of benefits and burdens, efficiency (I claim) is a requirement of justice, not a counterposed claim. As noted, efficiency is a weak requirement, and to be fully just, distributive arrangements must surely satisfy further conditions in addition to it. Just arrangements must be efficient and more, but they must not be inefficient.

It must straightaway be admitted that my treatment of the Pareto Norm is controversial. Suppose that there is some norm of justice, such as the norm that individuals’ good fortune should be proportionate to their moral deservingness, that in particular circumstances conflicts with the Pareto Norm: We can arrange things to satisfy Pareto or Proportional Deservingness, but not both. (We can alter a distribution of resources by taking away goods from the undeserving, which moves society closer to fulfillment of Proportional Deservingness, but the goods taken from the undeserving cannot be used to improve anyone else’s condition: they must be wasted. Here Pareto and Proportional Deservingness conflict.) And what holds for Proportional Deservingness might hold for other proposed principles of justice as well, including equal split.<sup>12</sup> Why side with Pareto when it conflicts with other justice norms? Surely doing so needs to be argued for, which I have not done.

In response: Whether or not one thinks that there are justice norms that trump Pareto, I would submit that equal split—the proposal that the benefits and burdens of cooperation within marriage, understood in a resourcist fashion, must always be distributed equally—is not a plausible candidate trumping principle. In this essay I simply point to the conflict between equal split and Pareto, and it is open to the reader to disagree with my intuitive verdict about their relative moral urgency.

Notice also that once we appreciate that Strong Antidiscrimination can be achieved without equal split and that equal split may not bring about the achievement of Strong Antidiscrimination, the requirement of equality within each family associated with equal split stands alone against Pareto. Even if we held that Strong Antidiscrimination should take priority over Pareto, that claim offers no support to equal split. We then have conflict between a rather idiosyncratic limited-domain equality norm (equal split) and a minimal and plausible equity norm (Pareto). In my judgment equal split loses this conflict.

A third response to the conflict between equal split and efficiency is to maintain that even though some people are made worse off by imposition of equal split, some people would find their bargaining position improved by this rule. In particular, women who by virtue of growing up in a male-dominated society find that they enter the marriage market with poor bargaining power in relation to the men they are willing to regard as potential partners, would find that with an equal split rule in place, their position within marriage will improve compared to what it would be in the absence of an equal split rule.

This response proceeds from misunderstanding. I agree that the promulgation of an equal split norm would have both the effect of making some couples worse off than they might otherwise be (by prohibiting mutually advantageous arrangements) and the effect of making some wives better off than they would otherwise be (by imposing an outcome that is better than they would get by bargaining in the absence of this sharing rule). But the initial objection was not that current sharing arrangements between spouses can be presumed to be Pareto-superior to the equal split proposal. Obviously this is not the case. Some men and women would gain and some men and women would lose in the transition from current practice to an equal sharing rule. To decide whether instituting the equal split rule here and now would be good policy, one would

have to weigh these effects against one another--and against other possible effects such as creating disincentives against entering into marriage. But this benefit from equal split for women is a feature of a sexually unjust society and presumably would lessen in importance as society gradually approached sexual equality. In a society of sexual equality, neither men nor women would on the average have greater bargaining power in negotiating the terms of their marriages, and the equal split rule would hurt women as a group bargaining individually over the terms of their marriage more than it would help them. Even if it would not be Pareto-inferior to current sharing arrangements, a regime of equal split would be Pareto-inferior to other arrangements that it would be feasible to institute. So the equal split rule should not be part of the ideal of a sexually just society.

In this regard it is useful to compare the marriage market to the economic market. An egalitarian who favors equality of life chances among individuals, or maximal improvements in the life expectations of the worst off individuals, would be ill advised to decree an equal split rule regulating voluntary contracting within economic firms. The expectable results would be disastrously inefficient. An egalitarian who prefers an equality of plenty to an equality of poverty, or who is concerned above all with improving the absolute level of benefits enjoyed by the worst off, will favor regulatory policies that decrease inequality or increase the benefits of the worst off at a lesser loss of efficiency--policies such as graduated income taxes, progressive inheritance taxes, and the use of tax revenues to finance programs that disproportionately benefit the worst off. The equal split rule would be ill-advised for the marriage market for much the same reason that equal split would be bad egalitarian policy for the economic market.

Another possible response to the conflict between efficiency and equal-split is to maintain that the problem would be a short-lived transitional difficulty that would disappear as women increasingly came to expect that they would be equal participants in the paid and unpaid labor of the family and formed their preferences accordingly. This



strikes me as a highly implausible speculation. Heterogeneity in preferences and talents across paid and unpaid labor is a robust phenomenon, albeit one partly masked by the current social norm that male spouses who are not independently wealthy should be full-time breadwinners (as well as the companion norm, declining in significance, that female spouses should be primarily homemakers). In particular, if spouses' income-producing talents differ significantly, the likelihood of Pareto-improving deviation from an equal split of paid and unpaid labor is high. Would spouses tend toward equal income-earning potential as society advances nearer to the ideal of a nonsexist society? Not likely. In a sexually egalitarian society, I suppose that in the aggregate men and women would have equal earnings potential, but still any two potential mates would likely have different potential earning ability.

#### EQUAL SPLIT AND BASELINE EQUALITY

The objection that equal split would block many couples from instituting mutually beneficial arrangements suggests an amendment of equal split, along the line of what Brian Barry has called the "extended solution."<sup>13</sup> One might propose a social norm that takes equal split as the baseline, but allows that it is acceptable for partners to depart from equal split when some unequal split is better for both the man and woman than equal split. Unequal splits that disadvantage one of the partners by comparison with the expected outcome under equal split would be ruled out. Of this baseline equal split proposal I would merely note that (if it could be enforced) it would affect the set of people who would be willing to mate with you. There might be some who would mate with you only on the basis of an unequal split that would be worse for you than equal split, but forming a couple with one of those potential mates on unequal terms might be your best option. It does not follow from this that the institution of baseline equal split would be bad for people, or bad for women, or bad for the relative life prospects ratio of women to men, but some analysis is needed.

More important, it is worth emphasis that just as bringing it about that society conforms to equal split is not needed to bring about conformity to Strong Antidiscrimination, so too enforcing equal split in its etiolated form, equal split as a baseline, would not be needed for compliance with Strong Antidiscrimination. Furthermore, for all that has been said, nothing guarantees that the successful enforcement of equal split as a baseline norm would serve to bring about conformity by society to Strong Antidiscrimination.

### DIFFERENCES

Return to the idea of the statistically equal split society. If there were no gender bias or antifemale prejudice in society, and if we contrived to block the replication of the effects of past inequality between men and women in future distributions, would all that guarantee that society would become statistically equal split? Not necessarily. Whether or not a statistical equal split would then emerge depends on how deeply entrenched are the differences between men and women in aspirations, preferences, values, and talents.

For an example, the economist Victor Fuchs has written that "many different kinds of evidence suggest that on average women feel a stronger desire for children than men do and a greater concern for their welfare after they are born."<sup>14</sup> This difference between male and female desires might be genetically influenced or it might be entirely the product of environmental factors that train men and women in different ways. If the latter, these environmental factors might eventually prove to be eliminable by reform efforts (at reasonable cost) or partly ineliminable. If the former, the genetic determinants might be liable to be countermanded by offsetting causes set into play by social policy, at reasonable cost, or not. In the present state of knowledge one can only speculate which of these possibilities is actual. Besides the desire to have and nurture children, other possible differences in preferences and abilities between men and

women that might prove to be shallow or deeply entrenched include a lesser proclivity on the part of women to resort to violence in conflict of interest situations when men and women face the same costs and benefits from choice of violent action, a greater tendency on the part of women to cooperate rather than defect in single-play prisoners' dilemma interactions, a lesser proclivity on the part of women to inflict sexual abuse on children, a greater talent for peacemaking and reconciliation in the context of long-term kinship and friendship relationships,<sup>15</sup> and a lesser affinity for competitive games and activities. If these putative differences between men and women (if actual) are eliminable, then with diligence we could obtain a statistically equal split society. If not, then, to revert to the single example of a stronger desire to have and nurture children, even a society with no unjust discrimination and no invidious socialization practices would still exhibit a pattern of greater material rewards to men, provided that those who are more singlemindedly dedicated to competitive market success will, other things equal, obtain greater competitive market success.

Recall that although the idea of a statistically equal split society is not advanced as a norm that society ought to strive to achieve, it was suggested as an indicator of how Strong Antidiscrimination might be satisfied without insisting on the more rigid equal split. If the for all practical purposes ineliminable differences between men and women (if any) should prove to be nontrivial, they would likely influence the distribution of resources and rewards between men and women. In this scenario the society fails to be statistically equal split, and what is more important, fails to satisfy Strong Antidiscrimination. Let's concentrate on version 1: merely being born a woman rather than a man interacts with social arrangements to give one lower life prospects. So here is a question: What would a reasonable principle of equality regulating relations between men and women require in this scenario? How might Strong Antidiscrimination be secured in a world of significant difference? One might well hold that since the desire to

have and care for children is socially beneficial, it would be wrong for society to be arranged so that women as a class are penalized for having such desires. The general point here is that reasonable policies to achieve justice between men and women will differ depending on the extent to which one takes these differences between men and women to be fixed for all practical purposes or eliminable by social policy. Whereas I had envisaged the satisfaction of Strong Antidiscrimination by a process of voluntary contracting and negotiating between individual men and women in a world without misogyny, entrenched difference would suggest the need for more deliberate regulatory policy even under highly idealized circumstances. For a world of significant difference, if equal split is rejected for the reasons I have asserted, the question becomes: If not equal split, then what? This essay aims only to pose this question and does not attempt to answer it.

#### ANOTHER PERSPECTIVE: POWER

Against the grain of the discussion so far it might be urged that the crucial issue of justice within the family so far as adult family members are concerned is not the distribution of benefits and burdens per se but equality of power within the relationship and the avoidance of relations of dominance and submission.<sup>16</sup> Along this line one might assert that if husband and wife have equal bargaining power within the marriage, it is not prima facie an injustice if one spouse voluntarily consents to an unequal split of paid and unpaid labor, income, and personal assets accrued during the course of the relationship. Consider the example of a wife whose spouse suffers from a disabling physical condition such as deafness. She agrees to an unequal split of income and paid and unpaid labor in which the disabled spouse receives the lion's share of benefits and she undertakes the lion's share of burdens. However, the source of this unequal sharing is not any inequality in power between the spouses, but rather the wife's reasonable

sympathy for the plight of her husband, who let us say has lower expected welfare than she does even taking into account the unequal sharing arrangements.

There is something right and also something wrong about this suggestion that family justice norms should uphold equality of power. I agree that there is no *prima facie* injustice if one spouse voluntarily and reasonably agrees to an unequal sharing arrangement with her mate. But it is wrong to uphold equality of power among adult family members as a condition of justice within the family.

If we were going to take seriously the requirement of equality of power, we would have to submit the vague notion of "power" to careful analysis. But we should not take this proposed requirement seriously, so we can forego careful analysis. The difficulty with the proposal is that on any reasonable construal of power or bargaining power within friendships and voluntarily chosen family relations, equality of power with a potential partner is simply one desideratum among many, one that easily may be overridden in a reasonable person's decision as to what sort of friendships and family relations to establish with which persons. Suppose that I greatly admire Jane and would greatly value friendship with her. She only mildly admires me and would slightly value friendship with me. Suppose further that it is the case that this imbalance in desire for friendship would give Jane superior bargaining power which I envisage she would use to her advantage. For example, if we live 100 miles apart, she might insist that we meet for friendly chats at a place that is far closer to her home than mine, hence more convenient for her. Nonetheless it may be that on balance friendship with Jane on a basis of unequal power would still be highly advantageous for me: the friendship would be rich and rewarding, and the expected benefits far outweigh any possible costs due to my weak bargaining position. Or, to vary the example, perhaps I correctly foresee that although Jane will have superior bargaining power over me if we form a friendship, she will not use this bargaining power to her advantage. Perhaps she has moral scruples

against using personal power to the disadvantage of one's friends, or perhaps she is just a nice, sympathetic person, so the prospect that she will have a power advantage over me is completely nonthreatening to me. And what goes for friendship goes for love relations and marital relations as well. Although it is unlikely that unequal bargaining power would give rise to arrangements that explicitly specify unequal sharing, informal and unspoken but mutually understood arrangements may quite likely be influenced by unequal bargaining power.

Some might advocate an ideal of friendship and love that insists on equality of respect and power between friends and lovers. But many others will reasonably reject ideals of this sort for reasons like those mentioned in the previous paragraph. Hence it would be morally wrong to enforce such an ideal as a requirement of justice (whether by law or by social norms) across an entire society. A decent society would not impose particular ways of life on its members which some of them reasonably reject.

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<sup>1</sup>. On these points, see the discussions in Victor R. Fuchs, *Women's Quest for Economic Equality* (Cambridge, MA: Harvard University Press, 1988); and in Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989).

<sup>2</sup>. For example, see Susan M. Okin's discussion of Rawls in *Justice, Gender, and the Family*, chapter 5, and in "Reason and Feeling in Thinking about Justice," *Ethics*, vol. 99 (1989): 229-249.

<sup>3</sup>. John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), p. 7.

<sup>4</sup>. For a criticism in this vein, see Susan Okin, "Political Liberalism, Justice, and Gender", *Ethics*, vol. 105, no.1 (October, 1994): 23-43. For a general account of

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feminist-inspired criticisms of mainstream liberal political philosophy, see Will Kymlicka, *Contemporary Political Philosophy: An Introduction* (Oxford: Oxford University Press, 1990), chapter 7.

<sup>5</sup> . See Amartya Sen, “Women’s Survival as a Development Problem,” *Bulletin of the American Academy of Arts and Sciences*, vol. 43 (November, 1989).

<sup>6</sup> . Okin, *Justice, Gender, and the Family*, p. 171. See also her further discussion of just sharing arrangements between spouses in chapters 7 and 8 of this book. This proposal is endorsed by Will Kymlicka in his review essay, “Rethinking the Family,” *Philosophy and Public Affairs*, vol. 20, no. 1 (Winter, 1991): 77-97.

<sup>7</sup> . My discussion of justice in the family considers only heterosexual marriages between exactly one man and one woman. This limited focus does not imply any negative judgment of nontraditional family arrangements. Perhaps it would be desirable for women more often to choose lesbian relationships and to raise children within lesbian households, and perhaps it would be good for gay men more frequently to be adoptive parents. But relations between adult family members in such households do not directly raise issues of justice between men and women, the topic of this essay. Moreover, this essay does not consider possible marital contracts among more than two persons. I take it that in such expanded partnerships, the equal split norm would not be appealing, because one plausible motivation for establishing a marriage-like partnership among several adults would be to exploit benefits of specialization by prospective partners in one or the other of paid labor or housework or childrearing.

<sup>8</sup> . Okin, *Justice, Gender, and the Family*, p. 171. In the same tentative spirit, she continues, “We must work toward a future in which all will be likely to choose this mode

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of life”—i.e., the mode in which there is “equal sharing by men and women of paid and unpaid work, of productive and reproductive labor” (same page).

<sup>9</sup> . Okin suggests an alternate basis of concern: within intimate relationships, unequal splits may render the worse-off party vulnerable to the other, subject to the power of the other, and this state of affairs might be deemed morally objectionable. On this view, equal split is a means to the elimination of personal vulnerability (or its reduction to a tolerable level). I comment on the idea that equality of power is of overarching moral importance in the last section of this essay. I regard equal split as a poor instrument for reducing undesirable vulnerability. Excessive vulnerability is better avoided by ensuring that individuals have reasonably low-cost options of exit from marriage, by making divorce easy to obtain and by maintaining a social safety net that keeps those with few marketable skills from falling into abject poverty in the wake of the collapse of a marriage or other close personal relationship.

<sup>10</sup> . For some skeptical discussion of this topic, see my “Against Rawlsian Equality of Opportunity” (forthcoming in *Philosophical Studies*).

<sup>11</sup> . Rawls, *A Theory of Justice*, p. 3.

<sup>12</sup> . For pertinent discussion, see Larry Temkin’s discussion of the principle he calls “The Slogan” in conflict with a principle that calls for equality of distribution in chapter 9 of his *Inequality* (Oxford: Oxford University Press, 1993). Temkin’s “Slogan” is related to but stronger than Pareto (it implies Pareto but Pareto does not imply it), so his criticisms of the Slogan do not directly carry over to criticisms of Pareto. See also Amartya Sen’s criticisms of the Pareto Norm in his *Collective Choice and Social Welfare* (San Francisco: Holden-Day, Inc., 1970), pp. 78-88.



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<sup>13</sup> . See Brian Barry, *A Treatise on Social Justice*, vol. 1, *Theories of Justice* (Berkeley and Los Angeles: University of California Press, 1989), p. 91.

<sup>14</sup> . See Fuchs, *Women's Quest for Economic Equality*, p. 4.

<sup>15</sup> . On differences in peacemaking, reconciliation, and coalition behavior between male and female primates, see F. B. M. de Waal, *Peacekeeping among Primates* (Cambridge, Mass.: Harvard University Press, 1989).

<sup>16</sup> . The locus classicus of this view is the work of Catharine MacKinnon. See her *Feminism Unmodified: Discourses on Life and Law* (Cambridge, MA: Harvard University Press, 1987); also *Toward a Feminist Theory of the State* (Cambridge, MA: Harvard University Press, 1989). Mackinnon has a theory of sexual oppression as rooted in distorted sexual desire. Discussion of this theory is outside the scope of this essay.