

## **Feminism and Multiculturalism**

### **1. Equality: Form and Substance**

In his account of justice as fairness, Rawls argues that treating the members of a society as free and equal—achieving fair cooperation among free and equal persons—requires much more than ensuring that everyone has the same set of legal rights and faces the same set of legal opportunities. Such “formal equality” is not enough when it comes to treating people as equals: to achieving the ideal of a society of equals. Not enough, because people’s real circumstances are so different: some are born into social advantage, and some are endowed (let’s say) with abilities—or a relative ease in acquiring abilities—that command a high price in the market. As Blake said, “some are born to sweet delight, some are born to endless night.”<sup>1</sup>

Given these real differences, fairness to individuals as free and equal moral persons requires more than formal equality of rights and legally-defined opportunities because people will be so unequally able to make use of these rights: the worth of their liberties and opportunities will be so unequal. Even if they are all endowed with equal rights and liberties, individuals will be able legitimately to complain that the society does not fully acknowledge their equal importance—as persons with a capacity to make something good of their lives.

In addition to ensuring equal rights, then, we need to respond to real differences in social and natural circumstances through laws and policies that

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<sup>1</sup> “Auguries of Innocence”

establish fair equality and then satisfy the difference principle. According to Rawls, the fundamental requirement that we be fair to people as free and equal—that we show them respect as such—demands no less.

Similarly, Dworkin argues that equal concern for persons requires a combination of sensitivity to choices (to acknowledge the special responsibility that each person has for her own life) and insensitivity to endowments (to acknowledge the equal importance of each person's life, that the success of each life matters equally). But in a world of unequal social starting positions and unequal natural endowments, the combination of choice sensitivity and endowment insensitivity requires more than a system of markets in which each person has a right to make choices about what to do with her endowments. More than such formal equality, equal concern requires equality of resources, which means both equality at the starting gate and a set of laws and policies modeled on a hypothetical insurance market. Once more, treating people as equals requires no less.

## **2. Further Beyond Formal Equality: Preferences and Culture**

But does it demand more? GA Cohen argues that it does, in the case of economic justice. Rawls's view, he says, is insufficiently egalitarian, and the limits on its egalitarianism come from its failure to see that principles of justice founded on the equality of persons apply not only to our laws and institutions but also to the preferences that guide our conduct. By excluding the personal from the political—taking preferences and values and therefore incentive-demanding

behavior as given—Rawls ends up accommodating injustice within the core of his theory of fair distribution. (The same general criticism applies to Dworkin as well.)

In making this point, Cohen generalizes, he says, on a point associated with feminist political thought: a point expressed in the slogan that “the person is political.” Suppose, feminists have said, that we begin with the safe premise that men and women are to be treated as equals. And suppose that this means that sexual differences are not to be made sources of disadvantage: that when it comes to social opportunities, sexual difference should not be a determinant of success: that, in Susan Okin’s words, “women should not be disadvantaged by their sex.”<sup>2</sup> Suppose now that men and women are socially unequal *not* because of legally imposed differences but because of expectations and attitudes conveyed through upbringing and culture—because of the “gender ethos” of the society. Suppose—as Susan Okin argued in her *Justice, Gender and the Family*—that men and women have unequal opportunities in the labor market because of the gendered division of labor in the family: because women are expected to carry the largest burden at home. And suppose that that expectation itself is reproduced by the culture and by the way that kids are raised. Making these assumptions, we cannot treat the culture, or the family, as arenas beyond justice. The reach of the ideal of treating people as equals is much greater.

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<sup>2</sup> *Is Multiculturalism Bad for Women?*, p. 10.

### 3. Group Rights

Another line of thought that builds on these ideas about how fairness to persons as free and equal demands something much more than formal equality is associated with *multiculturalism*. Now multiculturalism means many things, among them that we should have a deeper understanding of cultural differences and perhaps celebrate them as a human good. But one more specific idea associated with multiculturalism is the idea of *group-differentiated rights*. And this idea will provide the focus of our discussion today.

Consider for example a public school that imposes a general ban on headgear—defined as any covering of the head—for students. Let's say the school officials think that wearing hats in school is conventionally understood as a sign of disrespect for authority, and that disrespect is disrupting the school. Now a new contingent of students shows up, including some Orthodox Jews, some Sikhs, and some Muslim girls. Improbably enough, they join in a common act of protest against the unfair burdens that the existing headgear policy imposes on them. Let's say that they acknowledge the concerns about disruption that motivated the policy in the first place, and appreciate that some forms of head covering are, by convention, disrespectful of authority. They might nevertheless argue for a *special exemption* from the rule specifically for religious groups that require headgear as a matter of religious practice. That is one form of group-differentiated right: an exemption from a general law or policy for specifically designated groups, akin to the free-exercise exemptions we discussed earlier in the term.

In his work on multiculturalism and group rights, Will Kymlicka distinguishes three forms of group-differentiated rights: polyethnic rights, including exemptions from generally applicable rules and laws, of the kind just noted; special representation rights, for example, reserving legislative seats for members of minority ethnic or language groups; and self-government rights, including self-government for aboriginal groups, and federal systems that enable a national minority to control government in a province or state that it dominates.<sup>3</sup>

Why provide such special group rights? Let's start from the premise that group identification and membership are important to us for at least two reasons (here I am following Kymlicka). First, associating with others with whom we share a sense of group membership and solidarity supports our sense of our own worth, and thus provides a basis of self-respect—arguably, Rawls says, the most important primary good. Second, such association helps to provide us with a framework of values and ideals that enable us to make reflective choices among alternative ways to live. Cultural membership does not decide for us what we should do, but provides the context of ideas and traditions that helps us to make sense of the alternatives we face—a “context of choice,” in Kymlicka's phrase.<sup>4</sup> In short, cultural group membership is important, both for reasons of self-respect and for reasons of autonomy.

Suppose we agree that cultural and religious-group membership is of great importance for these reasons—of self-respect and meaningful choice. Still, we do not yet have a case for group-differentiated rights. Someone might argue

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<sup>3</sup> *Multicultural Citizenship*, pp. 26-33.

that the appropriate right way to acknowledge the importance of group membership is by protecting equal rights of association. If group affiliation is important to people, why won't the assurance of such rights suffice for enabling people to preserve the cultures they value? Why group-differentiated rights? Why isn't that more than equality requires?

In essence, the rationale for such rights is that simply providing equal rights of association may well result in unfair burdens on members of minority cultures.<sup>5</sup> Consider again the case of exemptions, such as the exemption from the headgear regulation: the minority group is faced with the choice of either violating a basic religious precept or establishing a separate system of schools, and it may lack the resources to establish such schools. Or consider a linguistic minority (say, French-speaking Canadians). The language may be closely associated with a distinct culture, but it may be very difficult to preserve the language and thus the culture if the state insists on conducting all its business (including education) in the majority language. In her essay "Is multiculturalism Bad For Women?", Okin summarizes the argument this way: "Cultural minorities need special rights, then, because their cultures may otherwise be threatened with extinction, and cultural extinction would be likely to undermine the self-respect and freedom of group members. *Special rights, in short, put minorities on an equal footing with the majority.*"<sup>6</sup> In short, living up to the democratic idea of treating people as equals—acknowledging that the life of each matters equally—

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<sup>4</sup> *Multicultural Citizenship*, chap. 5.

<sup>5</sup> *Multicultural Citizenship*, chap. 6.

<sup>6</sup> *Is Multiculturalism Bad for Women?*, p. 20.

may, once again, sometimes require treating people differently, not simply establishing a set of common liberties and opportunities.

We might describe this line of argument as a *liberal* case for group rights: the argument for the rights is founded not on the idea that cultural groups themselves have intrinsic value, or on the idea that group diversity is itself an important good. Instead, it is founded on values of individual self-respect and autonomy. The argument neither affirms nor denies that a more culturally pluralistic society is in itself a better society, say because it gives a fuller expression of human possibilities. More particularly, it does not address the issue of whether cultural diversity is a sufficiently important good to justify group-differentiated rights. Instead, the idea is that special cultural rights are required to preserve groups whose disappearance would impose an unfair burden on individuals. The issue is fairness to equal individuals.

So as the Rawlsian argues that the ideal of fair cooperation among free and equal persons—when confronted with real differences of social circumstance—requires something more than a framework of equal liberties and an absence of legal barriers to opportunity, so the liberal-egalitarian case for multiculturalism builds on this idea that equality does not mean sameness: given the social realities of group life, treating people as equals requires special rights for some minorities. In brief, in the face of individual differences, differential treatment does not violate equality, but is demanded by it.

#### **4. Limits**

Assume for the sake of argument that this case for group-differentiated rights is sound: that at least some such differences—say, religious exemptions from generally applicable law—are consistent with treating people as equals. Surely some restrictions on those rights are also essential. Suppose for example that a group calls for an exemption from school attendance requirements for all children in the group; or for girls. Or suppose it says that leaders of the group should be exempt from laws against murder, or assault, or theft—that they need to be entirely free from legal constraint in order to keep the group together.

To be sure, complicated cases are bound to arise: say, when a religious group (Christian Scientists) calls for an exemption from requirements of medical treatment, and argues that its interpretation of “best interests of the child” should trump then state’s interpretation when it comes to medical care for children of group members. But as a general matter, the case against group-differentiated rights when those rights are inconsistent with the entitlements of individuals to equal liberties seems very strong. After all, the reason for supporting group-differentiated rights in the first place is that such rights are understood as part of a system of requirements for fair treatment of persons, understood as free and equal. But if that is the rationale, then we should resist extending group rights in cases in which the rights are in conflict with other fundamental requirements of such treatment. So it is one thing to permit an aboriginal group—or a linguistic minority—to govern its own affairs, but quite another to permit the leaders of the group to ban movement by individual members outside the territory it controls, or

to ban religious conversion within the territory, or exempt its leaders from criminal law.

## **5. Gender and Culture**

As a general matter, then, we do not have a good case for group-differentiated rights in every instance on which the extension of those rights fits with the practices of the group or is required for the preservation of a group. Susan Okin's critical reflections on multiculturalism, understood as a commitment to group-differentiated rights, deepen this general concern. Okin begins her criticisms of group-differentiated rights from a premise that she identifies as feminist: the idea of equality, she says, requires that "women should not be disadvantaged by their sex . . . that they should have the opportunity to live as fulfilling and as freely chosen lives as men."<sup>7</sup> Just as opportunities should not be fixed by class background, according to the fair equality principle, so, too, they should not be fixed by sexual differences.

This principle should prompt caution, Okin says, in extending rights to cultural minorities in liberal democracies. Those cultures, she argues, are typically patriarchal: in doctrine and in practice, they deny the principle that women are to be treated as equals. In religious teachings (especially in the founding myths of the leading salvation religions), in practices of polygyny, in ideas about honor crimes, in cultural defenses against criminal conduct: Okin covers a wide range of examples that are meant to illustrate the following thesis:

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<sup>7</sup> *Is Multiculturalism Bad for Women?*, p. 10.

“Most cultures are patriarchal . . . and many (though not all) of the cultural minorities that claim group rights are more patriarchal than the surrounding cultures. So it is no surprise that the cultural importance of maintaining control over women shouts out at us in the examples given in the literature on cultural diversity and group rights within liberal states.”<sup>8</sup> Or, more simply, “most cultures have as one of their principal aims the control of women by men.”<sup>9</sup>

These are strong and controversial claims, particularly the claim that “cultural minorities that claim group rights are more patriarchal than the surrounding cultures.” And I think it is fair to say that Okin does not defend them carefully, though she presumably think that they have been defended with sufficient force elsewhere and can simply be assumed for the sake of argument. Moreover, the meaning of gender equality may not be so obvious as Okin suggests. She mentions all those “endless “begats” in Genesis, where women's primary role in reproduction is completely ignored,” but does not mention that, in Judaism, religious affiliation is passed along matrilineally. One could multiply the examples. But these limitations do not conflict with her central point, which might be stated as follows: proponents of group-differentiated rights have based their case on the idea of treating people as equals, and they do have a case. But they also have been inattentive to conflicts between such group rights and the elementary principle that women and men are to be treated as equals—a conclusion that follows from their own principle. Whether the conflicts are

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<sup>8</sup> *Is Multiculturalism Bad for Women?*, p. 17.

<sup>9</sup> *Is Multiculturalism Bad for Women?*, p. 13.

pervasive or not, whether the general theory of culture is right or wrong, they need to be attended to.

And Okin suggests two forms of attention: first, when the patriarchal character of the culture is explicit—when the group openly aims to prevent women from exercising their equal rights, as citizens—then the group ought not to receive group-differentiated rights: otherwise, the state directly lends its support to and is thus implicated in a denial of equal treatment. Even if it would be improper, as some might think, to force the group to change its practice, still, there is something objectionable about helping to sustain the practice—being complicit in it— by extending special rights to the group.

Second, suppose that the culture is less explicitly patriarchal, but still endorses views about sex roles that disadvantage woman—the sex discrimination is “less overt,” and practiced in the “private sphere.” Still we ought to resist the extension of special group rights. Because domestic practices—family and household—may be important in sustaining sexual inequality, we cannot simply look aside from them in deciding whether to extend special rights: once more, the personal is political in its bearing on the justice of the society.

Okin is not suggesting a ban on patriarchal religious or cultural groups, but only that such groups not be extended special rights that go beyond the rights of association that are available for all. Indeed, the point is even more subtle: in deciding whether to extend special rights, the “degree to which each culture is patriarchal and its willingness to be less so” ought to be taken into account. It need not be the sole consideration, but it is a “crucial” consideration, so the

stakes are high: there are some circumstances, we are assuming, in which groups make claims for special rights because their continued existence depends on those rights. Okin's point is that in some cases, those rights ought not to be extended, even if the result is that the group substantially transforms its practices or disappears. Preserving the culture may be important to autonomy and self-respect, but so is equality for men and women, as part of the general requirement that individuals be treated as equals. And it would be a mistake simply to privilege the equality that is associated with group membership over gender equality.