

Sex Equality and/or the Family: From Bloom vs. Okin to Rousseau vs. Hegel

Susan Moller Okin, *Justice, Gender, and the Family*. New York: Basic Books, 1989. Pp. viii, 216. \$19.95 (cloth), \$10.95 (paper).

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This article is slightly mislabeled, since I shall not attempt a comprehensive treatment of Susan Okin's worthy contribution to feminist political theory. Rather, I shall focus on Okin's response to one well-known conservative objection to sex equality: that sex equality tends to destroy important forms of communal association, specifically the family. This response is only one part of her argument, but as we shall see, it is a foundational part.

I. THE CONSERVATIVE CLAIM

The family, so the conservative argument goes, cannot endure unless women willingly subordinate themselves to men and children. The present essay's aims are twofold. First, I will argue that Okin's response, which is drawn from the liberal political theory of John Rawls, is inadequate to answer the conservative objection, because it implausibly assigns infinite weight to the value of justice as against other human aspirations. Second, I will offer a different and, I claim, better response: that insofar as it rests on a sentimental idealization of the communal bonds that the family at its best fosters, the conservative objection is internally incoherent.

What I have called the conservative objection must be distinguished at the outset from another "conservative" argument, which holds that respect should be accorded to the desires of those who value the tradi-

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tional meanings of gender and want to shape their lives in accordance with them.¹ This is really a liberal argument, since it rests on the right of the individual to shape her life as she sees fit. Okin is a liberal herself, and she does not deny this argument's power. Here, however, I am addressing a stronger claim on behalf of traditional gender patterns: that these patterns, even though they assign persons higher and lower social statuses on the basis of ascribed characteristics, are inherently more desirable than the alternatives, and that those who don't recognize this should be induced (whether by state power or by social customs and sanctions) to conform their behavior to those patterns.

The conservative argument deserves to be taken seriously. While concerns for the maintenance of social order are no longer invoked to defend racial hierarchy, these concerns seem more persuasive and troubling in discussions of gender and sexual orientation, because the traditional meanings of these statuses are intimately linked to the deeply valued institution of the family. The conservative objection to sex equality derives much of its force from a healthy suspicion of any project that seeks to reconstruct basic social institutions.

The science of government being . . . so practical in itself, and intended for such practical purposes, a matter which requires experience, and even more experience than any person can gain in his whole life, however sagacious and observing he may be, it is with infinite caution that any man ought to venture upon pulling down an edifice which has answered in any tolerable degree for ages the common purposes of society, or on building it up again, without having models and patterns of approved utility before his eyes.²

What Burke says about government could equally be said of any other major institution. Put baldly, given that we know of no society that has been able to do without male dominance, why should we imagine that we can? This cannot conclude the argument. The past successes of modern egalitarianism constitute a powerful reply to the conservatives: there was a time when the same argument could be (and was) made on behalf of slavery. From the beginning, that egalitarianism has depended on the overcoming of Burkean fears, and to some extent it has shown those fears to be exaggerated. The significance of gender as well as that of race has been reshaped—constitutional law, employment law, and the law of domestic relations, for example, have all been dramatically transformed in recent years in the name of sex equality—and many of these changes in women's status are uncontroversial today. Nonetheless, many Ameri-

1. See, e.g., DAVID L. KIRP, MARK G. YUDOF, & MARLENE STRONG FRANKS, *GENDER JUSTICE* (1986); MICHAEL LEVIN, *FEMINISM AND FREEDOM* (1987); *Johnson v. Transportation Agency*, 480 U.S. 616, 668 (1987) (Scalia, J., dissenting).

2. EDMUND BURKE, *REFLECTIONS ON THE REVOLUTION IN FRANCE* 152 (Conor Cruise O'Brien ed., Penguin Books 1968).

cans feel a persistent hesitation about pushing sex equality to its logical conclusions, such as allowing gays to marry.³ As long as there is such hesitation, legal theorists have an obligation to consider whether it has any rational basis. To the extent that such a rational basis has been articulated, it ought to be addressed.

II. THE LIBERAL RESPONSE

Okin recognizes this. Her *Justice, Gender, and the Family*⁴ uses a critical examination of the most influential contemporary political theorists, some of whom are proponents of the conservative objection I have just described, as a vehicle for proposing a radical reform of contemporary gender arrangements. The basic organization of the book is similar to that of her earlier work, *Women in Western Political Thought*,⁵ one of the earliest feminist studies of the history of political philosophy. There she argued persuasively that the major political theorists of the Western tradition, specifically Plato, Aristotle, Rousseau, and Mill, had failed to confront the radical implications of their theories when applied to issues of justice and gender. Here she undertakes a similar examination of contemporary theorists and, after disposing of Michael Sandel, Allan Bloom, Alasdair MacIntyre, and Robert Nozick, goes on to erect a positive theory founded on ideas of John Rawls and, to a lesser extent, Michael Walzer. These writers "have largely bypassed the fact that the society to which their theories are supposed to pertain is heavily and deeply affected by gender, and faces difficult issues of justice stemming from its gendered past and present assumptions."⁶ If these theories are examined from a perspective "that treats women, as well as men, as full human beings to whom a theory of social justice is to apply,"⁷ Okin argues, some of them are completely demolished, while others are transformed into feminist theories.

Neither book is addressed solely to the converted. Perhaps more than any other major feminist political theorist, Okin seeks to persuade "mainstream" political theorists of the importance of feminist concerns. In general, the book succeeds admirably. The prose is forceful and lucid, and the critiques are uniformly cogent and sometimes devastating. (Most notably, Okin shows that it has apparently never occurred to Nozick, who argues that people are entitled to own what they produce, that human beings are themselves produced by others. It follows that

3. It should be obvious that the law's refusal to sanction gay marriage cannot be defended on liberal grounds. Hence the liberal objection to sex equality cannot fully account for this hesitation.

4. SUSAN MOLLER OKIN, *JUSTICE, GENDER, AND THE FAMILY* (1989) [hereinafter *JUSTICE, GENDER*].

5. SUSAN MOLLER OKIN, *WOMEN IN WESTERN POLITICAL THOUGHT* (1979) [hereinafter *WOMEN*].

6. OKIN, *JUSTICE, GENDER*, *supra* note 4, at 8.

7. *Id.* at 23.

human beings are legitimate objects of property, and Nozick's logic thus leads to a slave society rather than a libertarian one.) The book culminates in a powerful portrait of women's present situation, which combines empirical and normative theory with great skill. Unhappily, however, Okin never directly addresses the most salient concerns of her conservative interlocutors. In this essay, I will show how she fails and will suggest a better approach.

In the earlier book, Okin showed that the subordination of women is unjustifiable in terms of any of the major traditions of Western political thought. Now she offers an explanation for that subordination: "Underlying and intertwined with all these inequalities is the unequal distribution of the unpaid labor of the family."⁸ This division of labor reinforces and is reinforced by women's economic dependency:

Employed wives still do by far the greatest proportion of unpaid family work, such as child care and housework. Women are far more likely to take time out of the workplace or to work part-time because of family responsibilities than are their husbands or male partners. And they are much more likely to move because of their husbands' employment needs or opportunities than their own. All these tendencies, which are due to a number of factors, including the sex segregation and discrimination of the workplace itself, tend to be cyclical in their effects: wives advance more slowly than their husbands at work and thus gain less seniority, and the discrepancy between their wages increases over time. Then, because both the power structure of the family and what is regarded as consensual "rational" family decision making reflect the fact that the husband usually earns more, it will become even less likely as time goes on that the unpaid work of the family will be shared between the spouses. Thus the cycle of inequality is perpetuated.⁹

Traditional family patterns thus promote women's pervasive dependence and vulnerability, a vulnerability that reaches its peak after divorce, when women who have been economically disabled by marriage often are, together with their children, left impoverished.

The family, thus understood, is brought before the bar of justice as formulated in Rawls' *A Theory of Justice*.¹⁰ Rawls argues that the principles of justice that regulate the basic institutions of society should be those that would be agreed to by persons who deliberate in what he calls "the original position." In the original position, a "veil of ignorance" conceals from each party any knowledge of "his place in society, his class position or social status, . . . his fortune in the distribution of natural assets or abilities, his intelligence and strength, and the like, . . . his con-

8. *Id.* at 3-4.

9. *Id.* at 5.

10. JOHN RAWLS, *A THEORY OF JUSTICE* (1971).

ception of the good, the particulars of his rational plan of life, even the special features of his psychology.”¹¹ Because none of the parties knows which position in society he or she will end up occupying, any principles they reach will be fair ones. Most relevant for Okin, they would agree to permit only those inequalities that are “to the greatest benefit of the least advantaged” and “attached to offices and positions open to all.”¹²

“This means,” Okin argues, “that if any roles or positions analogous to our current sex roles—including those of husband or wife, mother and father—were to survive the demands of the first requirement, the second requirement would prohibit any linkage between these roles and sex. Gender, with its ascriptive designation of positions and expectations of behavior in accordance with the inborn characteristic of sex, could no longer form a legitimate part of the social structure, whether inside or outside the family.”¹³

Because traditional family patterns are unjust, Okin calls for their reform. Specifically, she advocates new laws requiring that employers make positive provision for childcare leave and that large employers provide on-site daycare, that the government subsidize daycare, that sex-stereotyped schoolteacher hiring be ended and that children be taught about the problem gender poses in the world they will inherit, that sex education and contraception be more widely disseminated among the young, that paternal responsibilities be strictly enforced, that divorce settlements include child support payments sufficient to equalize the incomes of the two ex-spouses’ households, and that a nonworking spouse be legally entitled to half the income earned by the working spouse.¹⁴

The picture of woman’s contemporary situation Okin paints is indeed a bleak one, and there is much to be said for the reforms she proposes. Her reading of Rawls, which concludes that liberalism and feminism are one, is persuasive. Yet the book fails to overcome an objection that many readers will raise, that the family is somehow beyond justice, so that it is inappropriate to apply the standards of justice to it. If many women are now in a bad situation, it can be argued that this is a result, not of the old, sexist, protective gender arrangements, but rather of their abandonment. (The fact that Okin’s proposals will astonish many readers, and are exceedingly unlikely to be adopted, should show that the conservative objection is alive and well.) Okin tries to address this crucial problem in her chapter on Bloom and Sandel. Of all the authors she addresses, these two are the only ones who offer a reasoned defense of the existing gender order; the others simply pay inadequate attention to gender. This is,

11. *Id.* at 137.

12. *Id.* at 302.

13. OKIN, *JUSTICE, GENDER*, *supra* note 4, at 103.

14. *Id.* at 176-83.

however, the least persuasive part of the book. This failure in the work of so capable a scholar should tell us something about the limitations of the Rawlsian framework within which she constructs her argument. Okin, who teaches political science at Stanford, has probably employed her Rawlsian tools as skillfully as anyone can.¹⁵ If she fails here, it is because Rawls' approach cannot adequately address the issues Bloom and Sandel raise.

III. THE INADEQUACY OF THE LIBERAL RESPONSE

In recent years, political theory has been preoccupied with the debate between the advocates of rights-based liberalism, such as Rawls, Nozick, Ronald Dworkin, and Bruce Ackerman, and their communitarian critics, such as Sandel and MacIntyre. The dispute has centered on the relative worth of liberal aspirations to justice, liberty and equality, on the one hand, as against traditional communal practices and understandings on the other.

The publication of Rawls' book in 1971 broke a decades-old impasse in political theory, which had been paralyzed by the belief that questions of value could not rationally be resolved.¹⁶ Rawls' veil of ignorance, behind which he constructs a theory of the right independent of any fully developed theory of the good, showed that political theory could put such questions to the side and still yield determinate results. Even theorists who disagreed with the details of Rawls' argument were impressed by this possibility, and the 1970s witnessed an explosion of new theorizing about rights.¹⁷

In the past decade, however, there has been a revolt against this strategy and a new insistence that substantive ideas of the good be brought back into the discussion. The leading communitarian critique of Rawls is that of Sandel, who disputes the liberal view that "[j]ustice is the first virtue of social institutions"¹⁸ and argues that the aspiration to justice is an inadequate one. Sandel's paradigmatic counterexample, which is the focus of Okin's discussion, is "a more or less ideal family situation, where relations are governed in large part by spontaneous affection."¹⁹

Individual rights and fair decision procedures are seldom invoked, not because injustice is rampant but because their appeal is preempted by a spirit of generosity in which I am rarely inclined to

15. The book was co-winner of the American Political Science Association's Victoria Schuck Award for the best book on women and politics published in 1989.

16. See Judith N. Shklar, *Injustice, Injury, and Inequality: An Introduction*, in JUSTICE AND EQUALITY HERE AND NOW 13-14 (Frank S. Lucash ed., 1986) [hereinafter JUSTICE AND EQUALITY].

17. The intellectual context of Rawls' work, and the reaction against it, are described in IAN SHAPIRO, POLITICAL CRITICISM 3-16 (1990).

18. RAWLS, *supra* note 10, at 3.

19. MICHAEL J. SANDEL, LIBERALISM AND THE LIMITS OF JUSTICE 33 (1982).

claim my fair share. Nor does this generosity necessarily imply that I receive out of kindness a share that is equal to or greater than the share I would be entitled to under fair principles of justice. I may get less. The point is not that I get what I would otherwise get, only more spontaneously, but simply that the questions of what I get and what I am due do not loom large in the overall context of this way of life.

Now imagine that one day the harmonious family comes to be wrought with dissension The affection and spontaneity of previous days gives way to demands for fairness and the observance of rights. And let us further imagine that the old generosity is replaced by a judicious temper of unexceptionable integrity and that the new moral necessities are met with a full measure of justice, such that no injustice prevails.²⁰

The second situation, Sandel concludes, is hardly a moral improvement over the first. Rather, the overall moral balance may be diminished “where before there was neither justice nor injustice but a sufficient measure of benevolence or fraternity such that the virtue of justice had not been extensively engaged.”²¹

Even if Sandel is correct, it is unclear what consequences follow for political practice. Even if justice is not the highest good, and if other goods need to be weighed against justice, how does one deal with trade-offs between justice and benevolence or fraternity? If a community’s traditions, on which its sense of fraternity rests, are bound up with certain unjust practices, does the worth of that sense of fraternity outweigh the injustice or not? Sandel does not tell us.

But then, neither does Okin. She defends Rawls’ assertion that justice is the first virtue of social institutions by arguing that while there are indeed other moral qualities of social institutions that are more elevated than justice, “such moralities of supererogation, while they require *more* than the norms of right and justice, do not in any way contradict them.”²² Since families often do not live up to Sandel’s idealized model of them, Okin argues, it is crucial that fair shares be available to those who do find it necessary to claim them. As traditionally constructed, the spirit of generosity to which Sandel appeals is itself suspect from the point of view of justice:

No account is taken of the fact that the socialization and role expectations of women mean that they are generally more inclined than men not to claim their fair share, and more inclined to order their priorities in accordance with the needs of their families. The supererogation that occurs in families often occurs at women’s expense

20. *Id.*

21. *Id.* at 32.

22. OKIN, JUSTICE, GENDER, *supra* note 4, at 29.

. . . .²³

There are two inconsistent claims here: first, that there is no necessary tradeoff between justice and the supererogatory virtues, and second, that sometimes supererogatory virtues are predicated on injustice and so their sacrifice in the name of justice, now acknowledged to be necessary, is not to be mourned. But Sandel's account implies that even a community regulated by unjust supererogation may be morally superior to a state of affairs governed by justice: if the alternative to women's spirit of generosity and self-sacrifice is for all the members of society, male and female, to become self-centered and indifferent to the needs of others, then the injustice may be worth it, both for the women whose moral character is preserved and for the men and children who learn the value of generosity from the example of (and receive other tangible and intangible benefits from) those women.

Elsewhere, Okin has offered a different answer to Sandel: it is not the case that Rawls theory "requires us to regard ourselves as 'independent in the sense that our identity is never tied to our aims and attachments,'"²⁴ because the disposition among the citizens that is necessary to the realization of that theory is precisely one of concern and attachment.

If we, who *do* know who we are, are to think *as if* we were in the original position, we must develop considerable capacities for empathy and powers of communicating with others about what different human lives are like. But these alone are not enough to maintain in us a sense of justice. Since we know who we are, and what are our particular interests and conceptions of the good, we need as well a great commitment to benevolence; to *caring* about each and every other as much as about ourselves.²⁵

There are limits to the degree of benevolence that Rawls' theory demands, however. Okin does not believe, for example, that it demands the kind of supererogation traditionally associated with women. On the contrary, as we have seen, Okin condemns such supererogation. What basis could she have for doing so? Her answer to this is not clear, but the answer that is most consistent with what she does say is that the traditional supererogation of women is pathological even if it is voluntary, because it fails to regard "the identities, aims, and attachments of every . . . person . . . as of equal concern."²⁶ Traditional women regard one group as less worthy of concern than others, and that group is themselves. Even if some women find traditional roles satisfying, Okin thinks that one would not choose to be such a woman in the original position.

23. *Id.* at 31.

24. Susan Okin, *Reason and Feeling in Thinking about Justice*, 99 *ETHICS* 229, 245 (1989) [hereinafter *Reason and Feeling*] (quoting SANDEL, *supra* note 19, at 179).

25. *Id.* at 246 (emphases in original).

26. *Id.*

Okin does not explain why those women's acceptance of their roles does not vitiate the Rawlsian objection to their situation. (This is the liberal objection to feminism that was briefly discussed at the beginning of this article.) One answer might be that traditional notions of what role is appropriate for each sex depend on some substantive conception of the good, and that the parties in the original position do not know their conceptions of the good. Absent such a substantive conception, the situation of any individual in society must be evaluated in terms of her access to "primary goods," which Rawls defines as "things which it is supposed a rational man wants whatever else he wants."²⁷ These include, *inter alia*, "the social bases of self-respect."²⁸ "[T]he parties in the original position would wish to avoid at almost any cost the social conditions that undermine self-respect"²⁹ Women's traditional voluntary supererogation would then be understood not only to deprive them of their fair share of primary goods, but also to manifest a pathological deficit of self-respect.

A familiar objection to Rawls then arises: why should actual persons care about what the hypothetical parties in the original position would choose? Rawls acknowledges that "[t]he beneficiaries of clearly unjust institutions (those founded on principles that have no claim to acceptance) may find it hard to reconcile themselves to the changes that will have to be made."³⁰ But Okin points out that there is "a sense in which abiding by the principles of justice is in the self-interest of all—in the sense of *moral* self-interest."³¹ She supports this argument by quoting Rawls: "When all strive to comply with these principles and each succeeds, then individually and collectively their nature as moral persons is most fully realized, and with it their individual and collective good."³² Unjust institutions may, however, be necessary, not only to the crass conception of self-interest that Rawls rightly dismisses, but also to the more elevated moral dispositions that Sandel invokes. And in that case, in which society is the citizens' nature as moral persons most fully realized? Is our nature as moral persons better realized when we are capable of no more than an abstract concern for all equally, or when we feel a more particularized and concrete identification with a smaller circle?³³ If it is not true that one is obligated to care for everyone equally, then that argu-

27. RAWLS, *supra* note 10, at 92.

28. *Id.* at 303.

29. *Id.* at 440.

30. *Id.* at 176.

31. Okin, *Reason and Feeling*, *supra* note 24, at 246.

32. *Id.* (quoting RAWLS, *supra* note 10, at 528).

33. "If . . . we could ever see clearly and be moved by the value of each unique person in the world, we could never without intolerable pain and guilt be able to act so as to benefit any one of them rather than any other—as love, or justice, might in some cases require. (If I saw and valued other people's children as I do my own, my own could never receive from me the love, time, and care that she *ought* to have, that it is just and right for her to have.)" MARTHA NUSSBAUM, *THE FRAGILITY OF GOODNESS: LUCK AND ETHICS IN GREEK TRAGEDY AND PHILOSOPHY* 81 (1986). For similar objections to an abstract egalitarian ethic, see Alasdair MacIntyre, *Is Patriotism a*

ment cannot cut against socializing some people to care for themselves less than for others, or even socializing them to accept their status as instruments for satisfying others' needs.

A better liberal answer might be that women's supererogation is not freely chosen, but rather is their only feasible response to situations in which their husbands wield enormous power over them. Although, in a later chapter of the book, Okin cites facts that support this argument,³⁴ she does not deploy this argument against Sandel.

The indefiniteness of Okin's reply is perhaps traceable to the indefiniteness of Sandel's claim. He never presents an argument for believing that there is, in fact, a tradeoff between justice and benevolence. Such an argument is supplied by Okin's second interlocutor, Allan Bloom. "For two main reasons," Okin observes, "it is important to pay attention to Bloom's variety of antifeminism: it is a strongly articulated, though somewhat extreme, version of notions that have considerable currency in powerful circles these days; and Bloom, because of his own political agenda, admits freely that the maintenance of sex roles in the family is inconsistent with liberal-democratic standards of justice."³⁵

Because Bloom's argument is essentially that of the eighteenth-century philosopher Jean-Jacques Rousseau, it will be helpful to lay out Rousseau's premises, which are also assumed, but set forth less clearly, by Bloom. Rousseau is generally remembered as the patron saint of the French Revolution, but he is also the wellspring of modern secular conservative thought about gender. Rousseau thought that most human desires provide no basis for enduring social ties. Even sexual appetite can be satisfied by a momentary coming together and then parting. The only desire that does provide such a basis is *amour-propre*, which can be loosely translated as pride or vanity. Unlike the bodily appetites that the savage felt, and which were easily satisfied, *amour-propre* is "a relative sentiment, born in society, which inclines each individual to have a greater esteem for himself than for anyone else" and "inspires in men all the harm they do to one another."³⁶ This sentiment is quite distinct from the natural self-love of the savage, who does not compare himself with anyone and who is indifferent to the opinions of others. The natural man was dependent upon things, not upon men.³⁷ With the early development of society, people became aware that other people were looking at them. "Each one began to look at the others and to want to be looked at

Virtue?, THE LINDLEY LECTURE (Univ. of Kansas Dept. of Philosophy 1984); GEORGE ORWELL, *Reflections on Gandhi*, in A COLLECTION OF ESSAYS 182-83 (Doubleday Anchor 1954).

34. See OKIN, JUSTICE, GENDER, *supra* note 4, at 146-59.

35. *Id.* at 33-34.

36. JEAN-JACQUES ROUSSEAU, *Discourse on the Origins of Inequality Among Men* [hereinafter *Inequality*], in THE FIRST AND SECOND DISCOURSES 222 (Roger D. & Judith R. Masters trans., St. Martin's 1964).

37. JEAN-JACQUES ROUSSEAU, EMILE OR ON EDUCATION 85 (Allan Bloom trans., Basic Books 1979) [hereinafter EMILE].

himself, and public esteem had a value."³⁸ This was the origin of all conflict.

As soon as men had begun to appreciate one another, and the idea of consideration was formed in their minds, each one claimed a right to it, and it was no longer possible to be disrespectful toward anyone with impunity. From this came the first duties of civility, even among savages; and from this any voluntary wrong became an outrage, because along with the harm that resulted from the injury, the offended man saw in it contempt for his person which was often more unbearable than the harm itself. Thus, everyone punishing the contempt shown him by another in a manner proportionate to the importance he accorded himself, vengeance became terrible, and men bloodthirsty and cruel.³⁹

The problem that any society must address, then, is how to make it possible for men maddened by *amour-propre*, each of whom could be content only if he could be "the sole master of the universe,"⁴⁰ to live together peacefully and without tyrannizing over one another. An important part of the solution, Rousseau believed, lay in the family. It is "by means of the small fatherland which is the family that the heart attaches itself to the large one," and it is "the good son, the good husband, and the good father who make the good citizen."⁴¹

The only social tie in which *amour-propre* can find harmless and enduring satisfaction is the tie between man and woman. This is so because women can use their charms and wiles to pander to men's *amour-propre* and, by thus manipulating them, satisfy their own as well. It is women who bear the burden of doing this, because they need the family more than men do.

Woman and man are made for each other, but their mutual dependence is not equal. Men depend on women because of their desires; women depend on men because of both their desires and their needs. We [men] would survive more easily without them than they would without us.⁴²

Women bear children, and would raise them with difficulty without the help of the father. Material necessity thus impels a woman to induce a man to love his children.⁴³ Rousseau thought that there exist powerful reasons why she can only do this by submitting to her husband's absolute authority. First of all, the husband must feel confident that the children

38. ROUSSEAU, *Inequality*, *supra* note 36, at 149.

39. *Id.* at 149-50.

40. *Id.* at 179.

41. ROUSSEAU, EMILE, *supra* note 37, at 363.

42. *Id.* at 364.

43. *Id.* at 361.

are indeed his.⁴⁴ Second, because a man's natural sexual desires can be satisfied by any woman at all, his desire for any particular woman is sporadic and weak.⁴⁵ It is therefore necessary for a woman to inflame her man's desire by catering to his vanity, as Joel Schwartz explains:

The male desires not his partner, but his partner's esteem (and his own self-esteem) as the stronger. He desires to be desired more than he truly desires. Because of its psychological basis, the sexual relationship must appear to the male to be a political relationship; one in which his physical strength gives him title to rule the female. Because his desire is weaker, the male must seem to be the stronger. Female modesty, the resistance to male sexual advances which is then overcome, gives the male the desired appearance of strength.⁴⁶

A wife therefore must pretend to be weaker than she is; she must cloister herself in her house; she must be seductive toward her husband and chaste toward all other men.⁴⁷ By allowing him the appearance of rule over her, she achieves real rule over him. Because he thinks he's the boss, and she knows she's the boss, the *amour-propre* of both is satisfied. "Woman, who is weak, and who sees nothing outside the house, estimates and judges the forces she can put to work to make up for her weakness, and those forces are men's passions."⁴⁸ Rousseau thought that the alternative of dropping the pretense and frankly asserting their equality would be a disaster for women, because then they would lose their seductive appearance of weakness, while the burden of childrearing would continue to impair their ability to provide for themselves. "The more women want to resemble [men], the less women will govern them, and then men will truly be the masters."⁴⁹

Bloom's thesis can now be set forth very briefly. He argues that this is precisely what has happened. Something like the Rawlsian theory of justice is widely accepted, feminism has become influential, and the result is "the decline of the family, which . . . gave men and women unqualified

44. *Id.*

45. See JOEL SCHWARTZ, *THE SEXUAL POLITICS OF JEAN-JACQUES ROUSSEAU* 17 (1984).

46. *Id.* at 35.

47. OKIN, *WOMEN*, *supra* note 5, at 170-76, makes much of how hard it is to do this, but Rousseau would reply that the difficulty of the task stems from the logic of the female condition, for which he should not be blamed. JEAN-JACQUES ROUSSEAU, *POLITICS AND THE ARTS: LETTER TO M. D'ALEMBERT ON THE THEATRE* 83 (Allan Bloom trans., Basic Books 1960); ROUSSEAU, EMILE, *supra* note 37, at 361.

48. ROUSSEAU, EMILE, *supra* note 37, at 387; *cf. id.* at 371-72, 385; ROUSSEAU, *Inequality*, *supra* note 36, at 134-35. Okin and others have argued that Rousseau's defense of gender hierarchy is inconsistent with his broader egalitarian commitments. See, e.g., OKIN, *WOMEN*, *supra* note 5; Lynda Lange, *Women and 'The General Will'*, 49 U. OF OTTAWA Q. 401 (1979); Ron Christenson, *The Political Theory of Male Chauvinism: Jean-Jacques Rousseau's Paradigm*, 13 MIDWEST Q. 291 (1972). It is possible that the reason Rousseau did not see it this way was his fear of women's sexual power over men, which he thought so great that artificial restrictions on women's freedom were necessary in order to avoid complete female dominance. See Victor G. Wexler, *'Made for Man's Delight': Rousseau as Antifeminist*, 81 AM. HIST. REV. 266 (1976).

49. ROUSSEAU, EMILE, *supra* note 37, at 363.

concern for at least some others and created an entirely different relation to society from that which the isolated individual has."⁵⁰ The divorce rate has risen, and increasing numbers of women are raising their children by themselves. "The radical transformation of the relations between men and women and parents and children was the inevitable consequence of the new politics of consent."⁵¹ The new sexual egalitarianism has corroded the ties that bound men to women and children, just as Rousseau warned that it would:

In family questions, inasmuch as men were understood to be so strongly motivated by property, an older wisdom tried to attach concern for the family to that motive: the man was allowed and encouraged to regard his family as his property, so he would care for the former as he would instinctively care for the latter. This was effective, although it obviously had disadvantages from the point of view of justice. When wives and children come to the husband and father and say, "We are not your property; we are ends in ourselves and demand to be treated as such," the anonymous observer cannot help being impressed. But the difficulty comes when wives and children further demand that the man continue to care for them as before, just when they are giving an example of caring for themselves. They object to the father's flawed motive and ask that it be miraculously replaced by a pure one, of which they wish to make use for their own ends. The father will almost inevitably constrict his quest for property, cease being a father and become a mere man again, rather than turning into a providential God, as others ask him to be.⁵²

Feminism, according to Bloom, therefore "ends, as do many modern movements that seek abstract justice, in forgetting nature and using force to refashion human beings to secure that justice."⁵³

To this Okin replies that "He [Bloom] does not explain how feminists have used force in pursuit of their aims. By chaining themselves to railings, or by learning self-defense, perhaps?"⁵⁴ But only at the very end of her discussion does she directly confront Bloom's central assertion that "nothing can effectively make most men share equally the responsibilities of childbearing and child-rearing."⁵⁵ Here is her response in full:

Bloom says they won't do it because they are naturally selfish. Even if he were right, which I very strongly doubt, since when did we shape public policy around people's faults? Our laws do not allow kleptomaniacs to shoplift, or those with a predilection for rape to

50. ALLAN BLOOM, *THE CLOSING OF THE AMERICAN MIND* 86 (1987).

51. *Id.* at 110.

52. *Id.* at 130.

53. *Id.* at 100.

54. OKIN, *JUSTICE, GENDER*, *supra* note 4, at 35 n. *.

55. BLOOM, *supra* note 50, at 115.

rape. Why, then, should we allow fathers who refuse to share in the care of their children to abdicate their responsibilities? Why should we allow the continuance of the peculiar contract that marriage has become, in which legal equality is assumed but actual inequality persists because women, whether or not they work for wages, are considerably hampered in developing skills or economic security, being caught up in doing the great bulk of the family's unpaid work? Why should we allow an injustice that is clearly harming large numbers of children, as well as women, to persist as the foundation of our political order?⁵⁶

It appears that Okin is willing to use quite a lot of force after all to accomplish her goals. From the standpoint of justice, it is certainly an improvement for women who have been economically disabled by the traditional sexual division of labor to have a legally enforceable right to compensation, rather than having "to pander or servilely provide for the pleasures of"⁵⁷ men in order to gain economic security. But Bloom is on firm ground when he argues that to command selfish men to stop being selfish "is both tyrannical and ineffective."⁵⁸ If men are as he portrays them, then legislative efforts to make them serve their families out of altruistic rather than selfish motives risk the fate of socialist agricultural collectives.⁵⁹ Men will be less productive, they will connive to keep their product out of the hands of the state redistributive apparatus, and consequently that apparatus will have to become increasingly powerful and intrusive.⁶⁰ Even if it is successful in providing for women's and children's needs, a society in which such a bureaucracy has replaced the old, flawed but effective ties between men and their families will have paid a high price for justice. Sandel's question arises again: is it too high a price? Okin doesn't answer, saying only that she "very strongly doubt[s]" that men are as selfish as Bloom and Rousseau thinks they are. Her earlier treatment of Rousseau is equally evasive:

If, as seems likely, the assumed love and altruism of the family, founded as it is upon the radical inequality of women, has served to soften the full impact of a world of self-interested individuals, maybe one of the results of treating women as beings with their own personalities and interests will be to expose the full implications of a theory in which self-interest is assumed to be the norm for economic

56. OKIN, JUSTICE, GENDER, *supra* note 4, at 39-40.

57. *Id.* at 104.

58. BLOOM, *supra* note 50, at 129.

59. Bloom makes the comparison at *id.*

60. To some extent, this has already happened. In recent years, Congress has responded to a growing problem by enacting legislation to compel states, as a condition of eligibility for federal AFDC (Aid to Families with Dependent Children) funds, to withhold child support payments from wages where there has been a default in child support for a month or more. The legislation also makes federal records available to help locate absent parents. See Child Support Enforcement Amendments of 1984, 42 U.S.C.A. §§ 651-667 (1991).

and political life. Without the total selflessness that was supposed to exist within families, the total self-interestedness that liberalism assumes exists outside of them may seem more in need of reconsideration.⁶¹

This invites the reply that self-interestedness is more than a matter of theory and cannot simply be reconsidered away. A critique of the Bloom-Rousseau view has to do better than that.

The problem for liberal political theory is this. Many (perhaps most) citizens place great value upon the kinds of intimate association that are fostered by the traditional family at its best, but the equality of the sexes is irreconcilable with traditional family roles. It is therefore of the utmost importance that liberal egalitarians offer arguments why such intimate associations will not be destroyed by the abolition of these gender-specific roles. But liberal theorists have not done this, in part because, while these changes were taking place in American society, they had been striving vigorously to purge political philosophy of all consequentialist talk. The dominant strategy of modern liberal political theory is to ground itself on the right rather than the good, to defend a framework of inviolable rights and liberties within which each individual is left free to pursue her own conception of the good, whatever it may be. This has left the liberals incapable even of cognizing the complaint against them, which is a purely consequentialist one: that if individuals are given full sway to act autonomously, traditional family values such as commitment, stability, love and care for children will disappear. Conservatives such as Bloom, Phyllis Schlafly, and George Gilder (all echoing Rousseau) depict a world in which men, who would formerly have found contentment in lifelong marriage, lose interest in wives who have been defeminized by feminism and desert their families in pursuit of ephemeral erotic adventures, leaving behind impoverished mothers and fatherless children.⁶² The family as an institution will be shattered, these writers fear, and its members reduced to (what liberals had always

61. OKIN, *WOMEN*, *supra* note 5, at 285-86.

62. See GEORGE GILDER, *MEN AND MARRIAGE* (1986); PHYLLIS SCHLAFLY, *THE POWER OF THE POSITIVE WOMAN* (1977). Like Bloom, these writers are deeply indebted to Rousseau, and the principal tenets of his arguments reappear in their writings. On women's natural attachment to children, see GILDER at 13, and SCHLAFLY at 17, 33, 51-52; on men's lack of such attachment, see GILDER at 13-14, and SCHLAFLY at 42-43, 51, 223; on women's need to draw men into families by flattering their vanity, see GILDER at 17, 37, 40, 82, 96, and SCHLAFLY at 53-58; on the breakup of families when women cease to be dependent, see GILDER at 57, 77-78, and SCHLAFLY at 53, 95. The necessity for women to flatter men's vanity is a similarly ubiquitous theme in MARABEL MORGAN, *THE TOTAL WOMAN* (1975), which may be the best selling contemporary antifeminist work. See especially *id.* at 77-97. It is unfair and misleading to charge this argument with self-contradiction because it asserts that the differences between the sexes are natural, yet require social reinforcement. See ZILLAH R. EISENSTEIN, *FEMINISM AND SEXUAL EQUALITY: CRISIS IN LIBERAL AMERICA* 175-76 (1984). These writers argue that unless society accepts and reinforces those differences, they will manifest themselves in socially destructive ways.

imagined them to be, which is why they don't notice the change) isolated, atomized social monads.

It is not enough for a liberal to reply that even if people make bad choices, they still have a right to choose, and that even if the consequences are as bad as these writers describe, "even if overwhelming numbers opted for lives that I consider mean and narrow, we should at last learn what human freedom amounts to."⁶³ If that is what freedom amounts to, then surely we want less of it. William Galston argues that under liberal conditions certain ways of life are unlikely to thrive, and "[t]he easy assumption that only 'undeserving' ways of life lose out in a liberal society is unworthy of serious social philosophy."⁶⁴ Rawls has recently admitted the force of this objection, and concedes that liberalism may not allow sufficient space for certain desired ways of life.

But there is no criterion for what counts as sufficient space except that of a reasonable and defensible political conception of justice itself. The idea of sufficient space is metaphorical and has no meaning beyond that shown in the range of comprehensive doctrines which the principles of such a conception permit and which citizens can affirm as worthy of their full allegiance. The objection might still be that the political conception fails to identify the right space, but this is simply a question of which is the most reasonable political conception.⁶⁵

It is indeed. The problem is that our view of "which is the most reasonable political conception" cannot be separated from our view of what we want from political life. Rawls' theory of justice is founded on "commonly shared presumptions,"⁶⁶ "certain fundamental intuitive ideas viewed as latent in the public political culture of a democratic society,"⁶⁷ but he never tells us how "our considered convictions of justice"⁶⁸ can trump our other considered convictions in a way that maintains our reflective equilibrium. "There are questions," Rawls observes, "which we feel sure must be answered in a certain way."⁶⁹ Not all of these questions concern justice, however, and Galston's response to Rawls' vision of "overlapping consensus" is powerful:

From the standpoint of social stability, the best that can be hoped for is that the overwhelming majority of individuals and groups will

63. BRUCE ACKERMAN, *SOCIAL JUSTICE IN THE LIBERAL STATE* 375 (1980).

64. WILLIAM GALSTON, *LIBERAL PURPOSES: GOODS, VIRTUES, AND DIVERSITY IN THE LIBERAL STATE* 96 (1991) [hereinafter *LIBERAL PURPOSES*]; William Galston, *Defending Liberalism*, 76 *AM. POL. SCI. REV.* 621, 627 (1982).

65. John Rawls, *The Priority of the Right and Ideas of the Good*, 17 *PHIL. & PUB. AFF.* 251, 266 n.25 (1988).

66. RAWLS, *supra* note 10, at 18.

67. John Rawls, *The Idea of an Overlapping Consensus*, 7 *OXFORD J. LEGAL STUD.* 1, 6 (1987).

68. RAWLS, *supra* note 10, at 19.

69. *Id.*

find sufficient space within liberal society for the expression of their distinctive conceptions of the good. But for those who are left out, it is hard to see how liberalism can be experienced as anything other than an assault. Resistance is therefore to be expected, and it is far from clear on what basis it is to be condemned.⁷⁰

The liberal response must rather be that the empirical premise of the conservative objection is false, that the equality of women will not destroy the "spirit of generosity" that many people, male and female, associate with family life. But neo-Kantian liberalism, for which the right is prior to the good, rules out such consequentialist talk from the outset. In so doing, it cedes the most critical part of the battlefield, for the consequences of liberty are what the debate is really all about. If the liberals haven't yet lost this war by default, it may be because the consequences of a thoroughgoing conservative reaction don't look particularly attractive either. While Americans are uneasy about the direction liberalism would take them, they may be even more troubled by the prospect of an effort to restore communal solidarity through intolerance and repression.

IV. THE FAMILY AND RECOGNITION

Bloom's question, "[w]hat substitute is there for the forms of relatedness that are dismantled in the name of the new justice?"⁷¹ deserves an answer. Such an answer must begin by specifying (as Okin and Rawls do not) the communal goods that we are trying to protect. Once those goods are understood, we will be in a better position to ask whether, as Bloom thinks, they are necessarily dependent on hierarchy and deception.

Such a specification can be found in the work of Hegel. I now want to argue that Hegel can provide the resources Okin lacks for a critique of the Sandel-Bloom defense of gender hierarchy. Steven Smith argues that while neo-Kantian liberalism is too abstract, the communitarian response is too concrete. "In its assumption that everything we are we owe to the particular communities of which we are a part, the communitarians often appear dangerously indifferent to the quite-legitimate claims that individuals can make against their communities."⁷² The result "is merely to reendorse existing patterns of social and political life without asking whether those patterns are rational or whether they ought to exist."⁷³ In this, the communitarians are weak epigoni of Hegel, from whom their most trenchant criticisms of liberalism are drawn. Because Hegel sought

70. GALSTON, *LIBERAL PURPOSES*, *supra* note 64, at 149; William Galston, *Pluralism and Social Unity*, 99 *ETHICS* 711, 718 (1989).

71. BLOOM, *supra* note 50, at 131.

72. STEVEN B. SMITH, *HEGEL'S CRITIQUE OF LIBERALISM: RIGHTS IN CONTEXT* 5 (1989).

73. *Id.*

“to combine the liberal or enlightened belief in life, liberty, and the pursuit of happiness with the ancient Aristotelian conception of politics as a collective pursuit aimed at some idea of a public good,”⁷⁴ his views “provide a more useful point of departure for thinking through some of the problems of liberalism than any of the dominant alternatives.”⁷⁵ Smith does not attempt to apply Hegel to any of the concrete issues over which contemporary political theories are divided. If Rousseau was a surprising conservative, Hegel, the Prussian state philosopher who thought that women were inherently irrational, may seem an even more surprising feminist. Nonetheless, Hegel’s synthesis of liberty and community provides the conception of the good that we need in order to assess the egalitarian transformation of the family.

Hegel agreed with Rousseau that there is a fundamental human impulse to subjugate others, but unlike Rousseau he thought that the satisfaction of this impulse was self-defeating. Instead of taking the desire to be recognized and respected as a primary datum, Hegel thought it was a secondary desire, a manifestation of the more fundamental desire for knowledge. Because intelligent beings desire to know, they desire to know themselves. In order to attain such self-consciousness, they must be recognized by others. “A self-consciousness exists *for a self-consciousness*. Only so is it in fact self-consciousness, for only in this way does the unity of itself in its otherness become explicit for it.”⁷⁶

Like Rousseau, Hegel thought that human beings’ awareness that others are looking at them is inevitably a source of conflict. “In that other as ego I behold myself, and yet also an immediately existing object, another ego absolutely independent of me and opposed to me . . . This contradiction gives either self-consciousness the impulse to *show* itself as a free self, and to exist as such for another.”⁷⁷ Each ego demands first of all to be recognized by the other. This produces a battle: each demonstrates his freedom by risking his life in order to extort the other’s recognition. If the battle ends in the death of one of the combatants, however, “no recognition is achieved, for the survivor receives just as little recognition as the dead.”⁷⁸ If, on the other hand, one of the combatants surrenders in fear of his life, there arises the status of master and slave.

This solution is unsatisfactory even for the master. “Self-consciousness exists in and for itself when, and by the fact that, it so exists for

74. *Id.* at 8.

75. *Id.* at 14. Hegel’s usefulness for breaking the liberal/communitarian stalemate has been noted by other commentators as well. See RICHARD BERNSTEIN, *PHILOSOPHICAL PROFILES* 138-40 (1986); Drucilla Cornell, *In Defense of Dialogic Reciprocity*, 54 *TENN. L. REV.* 335 (1987).

76. G.W.F. HEGEL, *PHENOMENOLOGY OF SPIRIT* § 177, at 110 (A.V. Miller trans., Oxford University Press 1977) (emphasis in original). This appears to be the original statement of Sandel’s insight that the self is socially constituted.

77. G.W.F. HEGEL, *PHILOSOPHY OF MIND* § 430, at 170 (William Wallace trans., Clarendon Press 1971) (emphasis in original).

78. *Id.* § 432Z, at 172.

another; that is, it exists only in being acknowledged.”⁷⁹ But although the master now has achieved the acknowledgement he sought, his victory is an empty one, because

the object in which the lord has achieved his lordship has in reality turned out to be something quite different from an independent consciousness. What now really confronts him is not an independent consciousness, but a dependent one.⁸⁰

Put another way, the master, “imprisoned in his egotism, beholds in the slave only his immediate will and is only formally recognized by an unfree consciousness.”⁸¹ The problem is essentially the same one he would have if he had killed his antagonist: one cannot get recognition from a thing. As Kojève puts it, the master is left in “an existential impasse,”⁸² from which only the revolt of the slave can free him. Mastery and slavery must be abolished altogether before there can be true recognition between persons, each “beholding, in the independence of the ‘other,’ complete *unity* with it, or having for my object the free thinghood of the ‘other’ which confronts me and is the negative of myself, as my own being-for-myself.”⁸³ Only equality makes possible true mutual recognition, “the unity of the different independent self-consciousnesses which, in their opposition, enjoy perfect freedom and independence: ‘I’ that is ‘We’ and ‘We’ that is ‘I.’”⁸⁴ In sum, Hegel agrees with Rousseau that the desire for the esteem of others is the only appetite that can provide a firm basis for sociality. “This freedom of one in the other unites men in an inward manner, whereas needs and necessity bring them together only externally.”⁸⁵ But Hegel shows why Rousseau’s hierarchical solution is a blind alley.

For Hegel, the clearest sign of the progress that human society has made is that the “false, comparatively primitive, phenomenon of slavery” had been superseded by the modern state’s recognition of the juridical

79. HEGEL, *PHENOMENOLOGY OF SPIRIT*, *supra* note 76, § 178, at 111.

80. *Id.* § 192, at 116-7.

81. HEGEL, *PHILOSOPHY OF MIND*, *supra* note 77, § 435Z, at 175.

82. ALEXANDRE KOJEVE, *INTRODUCTION TO THE READING OF HEGEL* 19 (J. Nichols trans., 1980).

83. HEGEL, *PHENOMENOLOGY OF SPIRIT*, *supra* note 76, § 350, at 212 (emphases in original).

84. *Id.* § 177, at 110. Jürgen Habermas’ “ideal speech situation” may be understood as a restatement of this incompatibility between inequality and community: “Participants in argument have to presuppose in general that the structure of their communication, by virtue of features that can be described in purely formal terms, excludes all force—whether it arises from within the process of reaching understanding itself or influences it from the outside—except the force of the better argument (and thus that it also excludes, on their part, all motives except that of a cooperative search for the truth).” JURGEN HABERMAS, *1 THE THEORY OF COMMUNICATIVE ACTION: REASON AND THE RATIONALIZATION OF SOCIETY* 25 (Thomas McCarthy trans., 1984). For Habermas, a utopian aspiration is implicit in language itself. “Our first sentence expresses unequivocally the intention of universal and unconstrained consensus.” JURGEN HABERMAS, *KNOWLEDGE AND HUMAN INTERESTS* 314 (Jeremy Shapiro trans., 1971). The parallels between Habermas and Hegel are noted in SMITH, *supra* note 72, at 244-46.

85. HEGEL, *PHILOSOPHY OF MIND*, *supra* note 77, § 431Z, at 171.

equality of persons, which demonstrates "man's absolute unfitness for slavery."⁸⁶ The modern state is superior to its predecessors because it accords equal recognition to all citizens, most fundamentally in their formal equality before the law.⁸⁷ "A man counts as a man in virtue of his manhood alone, not because he is a Jew, Catholic, Protestant, German, Italian, &c."⁸⁸ But legal neutrality is a thin sort of recognition, since all that is recognized is an abstract juridical subject. In sexual love, however, the unity of subjectivity and the objective social world "has the form of particularity."⁸⁹ It is within the family that I, rather than an abstract shadow of myself, am recognized.

Hegel's theory of sexual attachment is very different from Rousseau's. As Peter Steinberger argues, Hegel's theory of marriage "is best understood as a logical derivation from the concept of the self."⁹⁰ The self as Hegel understands it is reflectively rational and self-determining and, therefore, has the capacity to act in terms of self-legislated principles. Marriage, rationally understood, is governed by such principles: it rests on a decision to constitute oneself as part of a community larger than oneself. Love is essentially the desire to so constitute oneself, the yearning to be part of a greater whole:

The first moment in love is that I do not wish to be a self-subsistent and independent person and that, if I were, then I would feel defective and incomplete. The second moment is that I find myself in another person, that I count for something in the other, while the other in turn comes to count for something in me. Love, therefore, is the most tremendous contradiction; the Understanding cannot resolve it since there is nothing more stubborn than this point of self-consciousness which is negated and which nevertheless I ought to possess as affirmative. Love is at once the propounding and the resolving of this contradiction.⁹¹

The means by which love rationally resolves its contradiction is marriage. The real foundation of marriage is not the mere feeling of the parties, which would constitute their union as a mere fortuitous coming together of elements that could then separate with equal ease. Nor is marriage a contract, because a contract is the external, arbitrary, and temporary creation of two wills that remain essentially unchanged. "On the contrary, though marriage begins in contract, it is precisely a contract to transcend the standpoint of contract, the standpoint from which

86. G.W.F. HEGEL, *PHILOSOPHY OF RIGHT* § 57R, at 48 (T.M. Knox trans., Oxford University Press 1952).

87. See HEGEL, *PHILOSOPHY OF MIND*, *supra* note 77, § 432Z, at 172-73; SMITH, *supra* note 72, at 145-47.

88. HEGEL, *PHILOSOPHY OF RIGHT*, *supra* note 86, § 209R, at 134.

89. HEGEL, *PHILOSOPHY OF MIND*, *supra* note 77, § 436Z, at 177.

90. Peter J. Steinberger, *Hegel on Marriage and Politics*, 34 *POL. STUD.* 575, 583 (1986).

91. HEGEL, *PHILOSOPHY OF RIGHT*, *supra* note 86, § 158A, at 261-62.

persons are regarded in their individuality as self-subsistent units.”⁹²

[I]ts objective source lies in the free consent of the persons, especially in their consent to make themselves one person, to renounce their natural and individual personality to this unity of one with the other. From this point of view, their union is a self-restriction, but in fact it is their liberation, because in it they attain their substantive self-consciousness.⁹³

The reason they attain substantive self-consciousness is that —recall the struggle for recognition—only in becoming parts of a social whole do they become substantive selves. Outside of such wholes, Hegel thought, people are not authentic individuals, but anonymous, interchangeable atoms. “A man actualizes himself only in becoming something definite, i.e. something particularized.”⁹⁴ And this is what happens in the family: “in a family, one’s frame of mind is to have self-consciousness of one’s individuality within this unity as the absolute essence of oneself, with the result that one is in it not as an independent person but as a member.”⁹⁵

Physical desire has its place in marriage, but it is subordinate to reason:

[M]arriage’s specifically ethical character . . . consists in this, that the consciousness of the parties is crystallized out of its physical and subjective mode and lifted to the thought of what is substantive; instead of continually reserving to itself the contingency and caprice of bodily desire, it removes the marriage bond from the province of this caprice . . . [T]he physical moment it subordinates until it becomes something wholly conditioned by the true and ethical character of the marriage relation and by the recognition of the bond as an ethical one.⁹⁶

Steinberger observes that this passage “suggests not merely that physical desire is tamed and channeled by reason, but in fact that reason comes to determine what is and is not desirable.”⁹⁷ Thus Hegel’s sexual liberalism is hardly an ideology of absolute sexual liberation. Rather, it is a call for sexual restraint founded on liberty. If sexuality can powerfully reinforce the constitutive ties that give life coherence, then felicity will not be increased by liberating sexuality from all ideational content. In marriage, I choose to keep my sexuality directed toward my spouse, because I thereby strengthen and preserve the ethical whole within which I attain my substantive self-consciousness. In this way (at least when all goes

92. *Id.* § 163R, at 112. Here Hegel appears implicitly to acknowledge the unsatisfactory thinness of purely juridical recognition.

93. *Id.* § 162, at 111.

94. *Id.* § 207, at 133.

95. *Id.* § 158, at 110.

96. *Id.* § 164R, at 114.

97. Steinberger, *supra* note 90, at 585.

well), the demands of liberty and of family stability are reconciled and, indeed, are revealed to be mutually interdependent.

Hegel's account of marriage cannot be accepted without modification, because as Steinberger notes, it is coupled with a "flatly contradictory" theory of gender.⁹⁸ Marriage requires the agreement of two rational persons, but Hegel thought that women could never achieve the degree of rationality of which men are capable.⁹⁹ Thus, either his theory of marriage or his theory of women must be scrapped. Since the former is firmly rooted in his foundational account of human interaction, while the latter seems no more than an unreflective expression of his prejudices, this is not a hard choice.

Hegel's account of marriage is attractive,¹⁰⁰ because today that institution's value for its members consists largely in its capacity to satisfy their desire for recognition. In industrial society, where political and economic institutions tend to be alien, anonymous, and more or less incomprehensible, domestic life takes on increasing importance as a locus for

98. *Id.* at 591. Joan Landes finds a similar contradiction in Hegel's view of women as on the one hand a rational subject within marriage, and on the other an inferior being "trapped in the immediacy and contingency of natural life." Joan Landes, *Hegel's Conception of the Family*, 14 *POLITY* 5, 22 (1981). Carole Pateman observes that Hegel's marriage contract "assumes that women are not, and cannot be, and yet are, individuals." CAROLE PATEMAN, *THE SEXUAL CONTRACT* 173 (1988); see also *id.* at 177. Benjamin Barber argues that Hegel's view of women is at war with all the rest of his philosophy, because "the idea of dialectical consciousness cannot bear the weight of incoherence placed on it by the sorts of undialectical contradictions associated with oxymorons such as truncated consciousness and partial reason." Benjamin Barber, *Spirit's Phoenix and History's Owl or The Incoherence of Dialectics in Hegel's Account of Women*, 16 *POL. THEORY* 5, 15 (1988). Merold Westphal agrees with all these writers that Hegel's egalitarian view of the family has radical implications, but parts company with them (and exceeds credulity) by claiming that Hegel was "sharply and deliberately out of step with prevailing attitudes and behaviors." Merold Westphal, *Hegel's Radical Idealism: Family and State as Ethical Communities*, in *THE STATE AND CIVIL SOCIETY: STUDIES IN HEGEL'S POLITICAL PHILOSOPHY* 77 (Z.A. Pelczynski ed., 1984) (emphasis added). Westphal can only call Hegel's radicalism "deliberate" by entirely ignoring his views of women. Allen W. Wood observes that Hegel's theory fails because it attempts to combine incompatible ideas: on the one hand, that the reconciliation of the principle of substantial commitment to ethical life and the principle of conceptual reflection requires a differentiation of social roles, confining women to the sphere of family life; on the other, that the modern world is committed to the liberty and equality of all individuals. The consequence is that Hegel "assign[s] a role to women that is socially necessary, yet devalued because it does not represent the principle given priority in the modern ethical order." ALLEN W. WOOD, *HEGEL'S ETHICAL THOUGHT* 245 (1990).

99. The most lurid illustration of this belief is in HEGEL, *PHILOSOPHY OF RIGHT*, *supra* note 86, § 166A, at 263-64:

Women are capable of education, but they are not made for activities which demand a universal faculty such as the more advanced sciences, philosophy, and certain forms of artistic production. Women may have happy-ideas, taste, and elegance, but they cannot attain to the ideal. The difference between men and women is like that between animals and plants. Men correspond to animals, while women correspond to plants because their development is more placid and the principle that underlies it is the rather vague unity of feeling. When women hold the helm of government, the state is at once in jeopardy, because women regulate their actions not by the demands of universality but by arbitrary inclinations and opinions. Women are educated—who knows how?—as it were by breathing in ideas, by living rather than by acquiring knowledge. The status of manhood, on the other hand, is attained only by the stress of thought and much technical exertion.

100. The commentators, at least, have found it so. See Landes, *supra* note 98, at 7; Steinberger, *supra* note 90, at 577; Westphal, *supra* note 98, at 77.

satisfying the craving for recognition.¹⁰¹ But to the extent that marriage induces the husband to believe that, whatever anomie he must endure in society at large, home is where he may regard himself as a lord and master, it reproduces the contradiction of slavery. As de Beauvoir observes, “[c]ertain passages in the argument employed by Hegel in defining the relation of master to slave apply much better to the relation of man to woman.”¹⁰² In the Rousseauian marriage (which, as Okin shows, resembles many contemporary marriages), the wife is motivated to accord her husband the recognition he seeks, not of course by the fear of death, but by the fear of unacceptable economic and social consequences. But his satisfaction is fraudulent. Given the disparity of power created by her economic dependence on him, it will be unsurprising if he discovers that what confronts him is not an independent consciousness, but a dependent one. Neither husband nor wife will be able to satisfy their desire for recognition, which “is possible only when each is for the other what the other is for it.”¹⁰³ This dependence manifests itself in a variety of ways, from wives who fake their orgasms and resignedly accept the double duty of full-time work and sole responsibility for childcare to women who dare not leave the men who batter them or molest their children.¹⁰⁴ “True union, or love proper, exists only between living beings who are alike in power and thus in one another’s eyes living beings from every point of view.”¹⁰⁵ The traditional institution of marriage, then, embodies the same contradiction we saw in slavery.

A similar point may be made about the mother-child relation. Here, too, liberalism and feminism have been accused of destroying the ties

101. Peter L. Berger & Hansfried Kellner, *Marriage and the Construction of Reality*, in PETER L. BERGER, *FACING UP TO MODERNITY* 5-22 (1977).

102. SIMONE DE BEAUVOIR, *THE SECOND SEX* 73 (H.M. Parshley trans., Vintage 1974). Joel Schwartz’s exposition and partial defense of Rousseau’s sexual philosophy concedes that the analogy between traditional sexual relationships and Hegel’s master-slave dialectic “is a good one,” but argues that the analogy reveals equality as well as inequality because of the power women exert over men: “As Hegel observes, it is not always so easy to distinguish the master from the slave.” SCHWARTZ, *supra* note 45, at 159 n.39, 39. But Hegel hardly imagined that this proved that slavery was legitimate. Scheherazade’s skill at mesmerizing the sultan with her stories in the *Arabian Nights* is certainly delightful to contemplate, but theirs seems an imperfect relationship inasmuch as, if she ever begins to bore him, he will lop off her head.

103. HEGEL, *PHENOMENOLOGY OF SPIRIT*, *supra* note 76, § 186, at 113. Hegel elsewhere concedes that the marriage relation is “confined within . . . the disparity of the sides.” *Id.* § 457, at 274.

104. Catharine MacKinnon uses the (hardly rare) case in which a husband isn’t sure whether his wife fakes her orgasms to show that men’s “Cartesian doubt is entirely justified: Their power to force the world to be their way means that they’re forever wondering what’s really going on out there.” CATHARINE MACKINNON, *Desire and Power*, in *FEMINISM UNMODIFIED* 58 (1987). One study found that more than half of the women surveyed sometimes fake or have faked orgasms. SHERE HITE, *THE HITE REPORT: A NATIONWIDE STUDY OF FEMALE SEXUALITY* 257 (1976). Jean Starobinski observes that since Rousseau himself did not consider sexual intercourse to be fundamentally different from masturbation, it is unsurprising that his mistress was unfaithful to him. JEAN STAROBINSKI, *JEAN-JACQUES ROUSSEAU: TRANSPARENCY AND OBSTRUCTION* 179 (Arthur Goldhammer trans., 1988).

105. G.W.F. HEGEL, *Love*, in *EARLY THEOLOGICAL WRITINGS* 304 (T.M. Knox trans., University of Chicago Press 1948).

that bind people together. The image of the career woman who abandons her children is a potent weapon.¹⁰⁶ Hegel doesn't have much to say about this relation, but as Jessica Benjamin has shown, his dialectic is highly relevant to it. The all-sacrificing, masochistic mother whose disappearance the conservatives mourn was as poor a source of recognition as an all-sacrificing, masochistic wife.¹⁰⁷

It is too often assumed that a mother will be able to give her child faith in tackling the world even if she is no longer able to muster it for herself. And although mothers ordinarily aspire to more for their children than for themselves, there are limits to this trick: a mother who is too depressed by her own isolation cannot get excited about her child learning to walk or talk; a mother who is afraid of people cannot feel relaxed about her child's association with other children; a mother who stifles her own longings, ambitions, and frustrations cannot tune in empathetically to her child's joys and failures. The recognition a child seeks is something the mother is able to give only by virtue of her independent identity.¹⁰⁸

The desire to subjugate woman-as-mother, predicated as it is on "the notion that the infant is infinitely fragile in his dependency and insatiable in his need,"¹⁰⁹ reflects the same strategy of lordship that we found in the desire to subjugate woman-as-wife. Both strains of antifeminism seem to be driven by the same fear of abandonment: if woman is allowed to do what she likes, she will become indifferent to those who need her.¹¹⁰ In both cases, to act on that fear is self-defeating. The more one is master, the more one is alone.

The Hegelian theory of sexuality also provides an answer to a criticism of homosexuality that is sometimes made. The argument is that the total commitment that is the telos of marriage is only made possible by sexual complementarity.

The opening of the self to the mystery of another gender, thereby taking responsibility for an experience which one does not wholly

106. See, e.g., BLOOM, *supra* note 50, at 128: "Are both parents going to care more about their careers than about the children? . . . Is half the attention of two the same as the whole attention of one? Is this not a formula for neglecting children?" And so on.

107. I have explored one aspect of the cultural association of motherhood with the subordination of women in *Forced Labor: A Thirteenth Amendment Defense of Abortion*, 84 NW. U. L. REV. 480 (1990).

108. JESSICA BENJAMIN, *THE BONDS OF LOVE: PSYCHOANALYSIS, FEMINISM, AND THE PROBLEM OF DOMINATION* 24 (1988). This is a more helpful evaluation of female supererogation than Okin's, because it takes into account the telos of relationship for the sake of which the family exists.

109. *Id.* at 211.

110. Benjamin shows that a number of conservative writers' "response to the feminist proposal of dual parenting . . . is to change the subject and talk loudly of the dangers of collective child-rearing." *Id.* at 203. In the minds of these writers, the idea that women should be freed of sole responsibility for childrearing "is transformed into a nightmare vision of raising children like Perdue chickens." *Id.* at 204.

understand, is a feature of sexual maturity, and one of the fundamental motives tending towards commitment. This exposure to something unknown can resolve itself, finally, only in a mutual vow. . . . Without the fundamental experience of the otherness of the sexual partner, an important component in erotic love is therefore put in jeopardy. For the homosexual, who knows intimately in himself the generality that he finds in the other, there may be a diminished sense of risk. The move out of the self may be less adventurous, the help of the other less required. In an important sense it is open to the homosexual to make himself less vulnerable and to offer, because he needs, less support.¹¹¹

This view sees in homosexuality a refusal to encounter the Other authentically. "In the heterosexual act, it might be said, I move out *from* my body *towards* the other, whose flesh is unknown to me; while in the homosexual act I remain locked within my body, narcissistically contemplating in the other an excitement that is the mirror of my own."¹¹²

The recognition that Hegel envisages, however, has no necessary connection with gender.¹¹³ Given what sexual complementarity has historically meant, one may doubt whether this is a promising avenue toward authentic recognition. "Such a concept of complementarity depends on a sadomasochistic concept of male and female relations. It covertly demands the continued dependency and underdevelopment of women in order to validate the thesis that two kinds of personalities exist by nature in males and females and which are each partial expressions of some larger whole."¹¹⁴ The complementariness of procreative systems does not entail a complementariness of personality, and the complementariness that our culture has erected on this biological base has been a union of master and servant.¹¹⁵ Hegel's argument suggests that such a union can never produce authentic recognition. On the other hand, no two persons of the same sex are sufficiently alike for their relationship to be

111. ROGER SCRUTON, *SEXUAL DESIRE* 307 (1986).

112. *Id.* at 310. Cf. Michael Novak, *Men Without Women*, AMERICAN SPECTATOR, Oct. 1978, at 14-17. Scruton is careful to add that "[s]uch a suggestion is no more than that, and certainly far from a proof." The question of why homosexual acts have been perceived as obscene by our culture "is a question that defies a simple answer." SCRUTON, *supra* note 111, at 310-11.

113. Cf. Steinberger, *supra* note 90, at 590.

114. Rosemary Radford Ruether, *From Machismo to Mutuality*, in *HOMOSEXUALITY AND ETHICS* 29 (Edward Batchelor ed., 1980). Ruether continues:

The maintenance of this false biological analogy on the level of total psychophysical organisms depends on an elaborate conditioning of women to passivity and males to aggressiveness. The mind and the five senses are the organs of thinking and feeling in total organic existence, not penises and vaginas. Men and women are equally well-equipped with the psychophysical organs of thinking and feeling, action and receptivity. Only a distorted psychic conditioning of the two sexes into opposite personalities, formed by power relations of domination and subjugation, makes them appear to be psychic opposites of each other, analogous to the superficial contraries of genitals.

Id. at 30.

115. I discuss the connections between heterosexism and sexism at greater length in *The Miscegenation Analogy: Sodomy Law as Sex Discrimination*, 98 YALE L.J. 145 (1988).

free of risk and therefore of the need for trust. The tension between self and other is itself sufficiently profound that any enduring relationship, regardless of the sexes of the participants, will inevitably require "taking responsibility for an experience which one does not wholly understand."

In sum, because "[t]he master-slave relation frustrates the purpose of recognition for which it was entered into,"¹¹⁶ the equality of women, far from destroying the essential goods of family life, is necessary for the full realization of those goods.

V. THE CONTRADICTIONS OF THE CONSERVATIVE CLAIM

Like Hegel's master, the male as imagined by Rousseau and Bloom is unwilling to enter into a relationship with a woman whom he cannot dominate. "A dependent, weak woman is indeed vulnerable and puts herself at men's mercy. But that appeal did influence a lot of men a lot of the time."¹¹⁷ This argument could of course justify any degree of inequality, including foot-binding were that still practiced. Too, in order for this sentimental picture of the old order to seem attractive, it is necessary to ignore everything we now know about the high incidence in traditional families of rape, wife-beating, and child abuse. Bloom denounces those who tell us of such things as "a multitude of properly indignant censors equipped with loudspeakers and inquisitorial tribunals,"¹¹⁸ but does not dispute the truth of what they say. It appears that a woman must put up with all that if she is to retain any influence over her man.¹¹⁹ "A career woman with essentially the same ends as a man could not produce such effects on him, nor would their partnership be more than a business partnership with the ends of each beyond and outside of it."¹²⁰ Bloom appears to believe that marriage as Hegel imagined it, a contract to transcend the standpoint of contract, is impossible. Either firm ties of proprietary interest will bind master and slave (with the slaves perhaps maintaining "a tactful, ironical consciousness that they are at least par-

116. CHARLES TAYLOR, *HEGEL* 216 (1975).

117. BLOOM, *supra* note 50, at 131.

118. *Id.* at 101.

119. See ROUSSEAU, EMILE, *supra* note 37, at 370.

120. Allan Bloom, *Rousseau on the Equality of the Sexes*, in JUSTICE AND EQUALITY, *supra* note 16, at 81. Schwartz, too, finds "compelling" Rousseau's view that "if men and women are really to care for each other, men and women really must be different from one another." SCHWARTZ, *supra* note 45, at 150. Schwartz acknowledges that Rousseau's case for sexual differentiation rests on his belief that women need to deceive and manipulate men. "Love is an illusion which is regrettably destroyed if the sexes come to be similar to one another, or even if they get to know one another too well. Men and women must ordinarily be separated from one another if men are to think women sufficiently unlike them to idolize women, to consecrate themselves to their service, and to sacrifice themselves in their behalf." *Id.* at 70. But Schwartz also concedes, as Bloom does not, that "Rousseau is weakest as a student of sexuality insofar as he exaggerates . . . the extent of the possibility of male independence." *Id.* at 152-53. If men's dependence on women is not an illusion, all this manipulation seems unnecessary, and it is not clear why, if men and women are to care for each other, the difference between them needs to be any greater than the difference between self and other on which Hegel relies.

tially playacting in order to preserve a viable order"¹²¹), or atomized individuals will collide randomly in a soulless marketplace in which all communal ties have vanished.

This polar opposition is reminiscent of the writings of George Fitzhugh, the premier apologist of the antebellum South.¹²² Fitzhugh, a Virginian writing in 1857, thought that slavery was a far more beneficent system of social organization than the capitalism that prevailed in the North. It was a universal fact that the rich and powerful gave their protection and support to the poor and weak only to the extent that it was in their interest to do so. By giving the master a permanent interest in the slave's well-being, slavery assured that slaves would be cared for even if business was slow or the slave was too young or old or sick to work. In any of these circumstances, Fitzhugh observed, the northern laborer would be laid off and left to starve. Because the slave was more secure than his northern counterpart, Fitzhugh reasoned, all labor ought to be enslaved for the sake of its own happiness and protection.¹²³

The differences between the two arguments are as enlightening as the similarities. Bloom's argument has a strength that is conspicuously missing from Fitzhugh's. If Fitzhugh was right, then there should have been at least some northern white laborers who would head south seeking the benefits of slavery. The fact that none did suggests that Fitzhugh's comparison of the two systems has missed something. In recent years, however, there has been a significant anti-feminist reaction among women seeking to preserve their traditional protected status. It played a significant role in defeating the Equal Rights Amendment, and appears to be well represented in the anti-abortion movement.

But Bloom's argument also has a weakness that is not to be found in Fitzhugh's. Fitzhugh's argument ultimately rests not on the value of community, but on the need to provide security to the laborer. His depiction of the condition of the Northern laborer is telling. His claim was not that something important would be lost when the sentimental ties binding master to slave were replaced by the faceless bureaucracy of the Freedmen's Bureau. Such a claim would be unpersuasive. Bloom, however, is making just such a sentimental argument. This cannot be done with the Rousseauian materials on which he relies.

Because of his denunciation of competitive, consumerist commercial values, Rousseau can be understood as the first communitarian critic of

121. BLOOM, *supra* note 50, at 126.

122. Lest I be accused of taking a cheap shot at Bloom with this comparison, I shall state that I agree with Eugene Genovese that Fitzhugh "stands out as a more important and internally consistent thinker than is generally accepted," and that "the values for which [he] fought still have something to offer." EUGENE GENOVESE, *THE WORLD THE SLAVEHOLDERS MADE* 119, 126 (1971). Both thinkers deserve more careful consideration than the peremptory dismissal they often get.

123. GEORGE FITZHUGH, *CANNIBALS ALL! OR SLAVES WITHOUT MASTERS* (C. Vann Woodward ed., 1960).

liberalism, but his animating concerns are very different from those of Sandel, for whom membership in a community is a positive good. For Rousseau, the aspiration of social life is a negative one: to forestall the tendencies to tyranny and inequality that manifest themselves so powerfully whenever human beings live together. The point of the social contract envisaged in his most celebrated work is to prevent inequality: "as each gives himself to all, he gives himself to no one; and since there is no associate over whom one does not acquire the same right one grants him over oneself, one gains the equivalent of everything one loses, and more force to preserve what one has."¹²⁴ As Judith Shklar observes, Rousseau never concerns himself with the relations that exist *between* citizens.

The 'others' are the situation for the individual citizen, and he remains an isolated entity who reacts to them. Their justice creates that absence of oppression which is the essential feature of a legitimate society. For the individual it is a framework, not a set of relationships. He helps to maintain the structure, but he does so primarily by keeping his own inner civic self intact.¹²⁵

In *Emile*, Rousseau's treatise on education, the aspiration similarly "is negative in that it prevents the imposition of an artificial, socially devised and socially oriented self upon the child."¹²⁶ This negative aspiration explains why Rousseau was always tempted by an ideal of solitary self-sufficiency, where man's mind is occupied by nothing but the sentiment of his own existence.¹²⁷ In short, Sandel and Rousseau don't mix.

What this comparison of Rousseau and Hegel should teach us is that it is disingenuous for defenders of traditional institutionalized sexual difference to invoke the value of community, because their position rests on a deep pessimism about the possibility of community. By eliding the issue of whether the demands of justice conflict with those of community and,

124. JEAN-JACQUES ROUSSEAU, *ON THE SOCIAL CONTRACT* 53 (Roger D. Masters ed. & Judith R. Masters trans., St. Martin's 1978) [hereinafter *SOCIAL CONTRACT*].

125. JUDITH SHKLAR, *MEN AND CITIZENS: A STUDY OF ROUSSEAU'S SOCIAL THEORY* 183 (1969).

126. *Id.* at 148.

127. See Shklar, *Injustice, Injury, and Inequality: An Introduction*, *supra* note 16, at 179; JEAN-JACQUES ROUSSEAU, *THE REVERIES OF THE SOLITARY WALKER* 68-69 (Charles Butterworth trans., New York University Press 1979); LEO STRAUSS, *NATURAL RIGHT AND HISTORY* 291-94 (1953). It is arguable that this same temptation has ensnared some feminists, who infer from the present condition of women that all relations of dependency between the sexes are pernicious. See Elizabeth Rapaport, *On the Future of Love: Rousseau and the Radical Feminists*, in *WOMEN AND PHILOSOPHY: TOWARD A THEORY OF LIBERATION* 185 (Carol C. Gould & Marx W. Wartofsky eds., 1976); SCHWARTZ, *supra* note 45, at 9, 85-86. But Rousseau would have rejected their aspiration to liberate humanity from such dependency as utopian. "[M]en have reached the point where the obstacles to their self-preservation in the state of nature prevail by their resistance over the forces each individual can use to maintain himself in that state," and therefore "that primitive state can no longer subsist and the human race would perish if it did not change its way of life." ROUSSEAU, *SOCIAL CONTRACT*, *supra* note 124, at 52. His teaching of solitary self-sufficiency is an aristocratic one, meant only for rare individuals like himself; by definition such asocial, liberated selves could never form a society. SCHWARTZ, *supra* note 45, at 153-54.

therefore, the issue of what *kind* of community is threatened by the demands of justice, Okin has let her opponents off the hook at the weakest point in their argument. The Hegelian aspiration is simply worthier than the Rousseauian one, and better describes the essential goods we seek in our intimate relations.

Rousseau might concede this while continuing to insist that the Hegelian aspiration is unrealizable, and that the prevention of tyranny is the best society can hope for. There are two ways in which he might support this argument: by attacking Hegel's philosophical account of human needs, or by compiling empirical evidence showing that the project of gender equality has been fairly tested and shown to fail.

The first approach has been most exhaustively pursued by Jean-Paul Sartre. Sartre's work is relevant here because he resembles Rousseau in his pessimism about relationships and in his reasons for this pessimism, and because unlike Rousseau (who died when Hegel was seven years old) Sartre develops a detailed critique of the Hegelian position. Like Rousseau, Sartre thought that the subject's awareness that another is looking at him gives rise to anxiety about the meaning assigned to oneself by this perspective, and that this anxiety is the source of social malaise. "To be looked at is to apprehend oneself as the unknown object of unknowable appraisals—in particular, of value judgments."¹²⁸ Like Rousseau's man of *amour-propre*, Sartre's subject strives to control the other's look by subjugating him. Should he succeed, however, he will end up in the impasse of the Hegelian master.¹²⁹ For Sartre, this problem has no solution: "it is the Other's freedom as such that we want to get hold of,"¹³⁰ but the Other's freedom vanishes as soon as it is controlled firmly enough to ease our insecurity. Relations between self and other are thus characterized by an unavoidable hostility which even the enslavement of the other cannot assuage. Sexual desire ameliorates this hostility, but only because it allows the self momentarily to trap the other's free subjectivity in the flesh, which can be possessed. When desire is inevitably exhausted by orgasm, solitude and hostility return.¹³¹

Sartre thought that the Hegelian aspiration to mutual recognition was an impossible one, and he "marshal[led] against Hegel a twofold charge

128. JEAN-PAUL SARTRE, *BEING AND NOTHINGNESS* 358 (Hazel E. Barnes trans., Pocket Books 1966).

129. *Id.* at 482.

130. *Id.* at 478.

131. It is noteworthy that Simone de Beauvoir, while purporting to follow Sartre, implicitly crossed over to the Hegelian camp on the issue of recognition and propounded a vision of sexuality more optimistic than that of Sartre's lovers, who take turns being subject and object. "[I]f he lusts after her flesh while recognizing her freedom, she feels herself to be the essential, her integrity remains unimpaired the while she makes herself object Under a concrete and carnal form there is mutual recognition of the ego and of the other" DE BEAUVOIR, *supra* note 102, at 448. "Beauvoir's sex act was very different from Sartre's manipulative, faintly disgusted play with female flesh." ANDREA NYE, *FEMINIST THEORY AND THE PHILOSOPHIES OF MAN* 89 (1988).

of optimism."¹³² First, Hegel failed to grasp the epistemological abyss that separates me from the other: I cannot know that the other knows me as I know myself. Second, there is an ontological abyss between us: the higher-order species being that Hegel sees emergent from interaction could not exist without obliterating the individuality of its members. "No logical or epistemological optimism can cover the scandal of the plurality of consciousnesses."¹³³ Both of these charges rest on fundamental misunderstandings of Hegel's position.

The second argument can be disposed of summarily. The constitution of the self as part of a larger social whole hardly obliterates the self. As William Ralph Schroeder argues, "one acts and thinks differently than one does as a separate individual, but this does not mean that one's individuality is sacrificed."¹³⁴ Rather, we have already seen that in Hegel's account, particularity and social being are mutually constitutive.

Nor is the epistemological divide between persons as absolute as Sartre suggests. "Species-being does not emerge from matching of one's own self-image with another's image of oneself, but from a relation that each adopts toward the Other and that simultaneously expresses and transforms both."¹³⁵ Recognition of the other as like myself is logically independent of perfect knowledge of the other.¹³⁶ Moreover, while the knowledge of the other that is achieved is always mediated by language and therefore is always fallible, this is hardly an insuperable obstacle. The other's opinion of me is often all too obvious.¹³⁷

This objection is really an expression of dissatisfaction with mediated knowledge, which unfortunately is the only kind of knowledge we have. One finds the same dissatisfaction in Rousseau, whose writing can be understood as a protest against the necessity of writing.¹³⁸ "Rousseau wants to affect others but without venturing outside himself. . . . Given his refusal to act, the distance between self and others can be traversed only by magical means."¹³⁹ Rousseau yearns for a perfect transparency between human souls, but as soon as this yearning is frustrated it collapses into the embittered conviction that human communication is impossible. "He either hurdles obstacles as though they did not exist or comes to a halt before them as though they were insuperable. There is no middle ground."¹⁴⁰ And similarly with Bloom, who bemoans the tendency of his students to understand their affairs as "relationships," a

132. SARTRE, *supra* note 128, at 324.

133. *Id.* at 329.

134. WILLIAM RALPH SCHROEDER, *SARTRE AND HIS PREDECESSORS: THE SELF AND THE OTHER* 101 (1984).

135. *Id.* at 583.

136. *Id.* at 85.

137. *Id.* at 93.

138. STAROBINSKI, *supra* note 104, at 143.

139. *Id.* at 173.

140. *Id.* at 219.

word that is "gray, amorphous, suggestive of a project, without a given content, and tentative," instead of "love," which "presents illusions of perfection to the imagination and is forgetful of all the natural fissures in human connection." "You work at a relationship, whereas love takes care of itself."¹⁴¹ This is a one-sided exposition of Rousseau's view: in his ideal marriage, love takes care of itself for the *man*, while it is the *woman's* task, and a very demanding task, to keep the relationship alive. It is only for him that love is an illusion. She can never afford to forget that he loves not her, but his image of her, and that if he ever sees through that image he will abandon her.¹⁴² Bloom's awareness of this sits uneasily beside his sentimental nostalgia. Rousseau's vision of heterosexuality is a more disappointed ideal than Bloom is ready to admit. Indeed, we may charge Bloom with the same sin that his mentor, Leo Strauss, thought characteristic of all political philosophy since Machiavelli: he has lowered the aspirations of social life (here, of family life) in order to increase the likelihood of their realization.¹⁴³

As for the empirical evidence, it is more ambiguous. With respect to the fundamental question of whether Hegel or Rousseau has more accurately described the psychological makeup of the human being, modern psychology seems to weigh on the side of Hegel. Recent research indicates that the human infant, far from being (as Freud thought) a passive and withdrawn creature that regards its caretaker as merely the object of its oral needs, is willing and happy from the very beginning to interact with the world, and has a need for recognition that can only be satisfied by independent others. Jessica Benjamin has argued that this need typically is frustrated, and takes on pathological forms of expression, only because the cultural apparatus of gender encourages children to resolve the Hegelian paradox by splitting its terms into a masculine subject and a feminine object. All children aspire to agency in the world, but they learn that this is associated with the father and not the mother. For boys, masculinity becomes associated with power over and repudiation of women; for girls, this same aspiration to agency becomes associated with hopeless yearning and with self-abasement. Early childhood socialization thus sets the stage for adult heterosexual domination.¹⁴⁴ The pattern of feminine manipulation envisaged by Rousseau may well be the least tyrannical form that this can take, but it does not exhaust human possibilities. Rousseau's error is like that he finds in his predecessors,

141. BLOOM, *supra* note 50, at 124.

142. See ROUSSEAU, *EMILE*, *supra* note 37, at 391; STAROBINSKI, *supra* note 104, at 221.

143. Cf. STRAUSS, *supra* note 127, at 178. This point emerged in conversation with Bruce Ackerman.

144. BENJAMIN, *supra* note 108; for a parallel but distinct analysis, see DOROTHY DINNERSTEIN, *THE MERMAID AND THE MINOTAUR: SEXUAL ARRANGEMENTS AND HUMAN MALAISE* (1977).

who, he claims, "confuse natural man with the men they see."¹⁴⁵

Bloom thinks that nature dictates the differences between the male and female situation:

Man in the state of nature, either in the first one or the one we have now, can walk away from a sexual encounter and never give it another thought. But a woman may have a child, and in fact, as becomes ever clearer, may want to have a child. Sex can be an indifferent thing for men, but it really cannot quite be so for women. This is what might be called the female drama. Modernity promised that all human beings would be treated equally. Women took that promise seriously and rebelled against the old order. But as they have succeeded, men have also been liberated from their old constraints. And women, now liberated and with equal careers, nevertheless find that they still desire to have children, but have no basis for claiming that men should share their desire for children or assume a responsibility for them. So nature weighs more heavily on women. In the old order they were subordinated and dependent on men; in the new order they are isolated, needing men, but not able to count on them, and hampered in the free development of their individuality. The promise of modernity is not really fulfilled for women.¹⁴⁶

But this argument rests, not on physical, but psychic necessity: the woman may *want* to have a child. Is this difference between the sexes dictated by nature? Rousseau thought that even maternal love was the effect of habituation.¹⁴⁷ Before children appear, there does not appear to be any difference between the sexes except with respect to (what technology can now easily control) the likely consequences of sexual intercourse.¹⁴⁸ "The peculiar attachment of mothers for their children existed, and in some degree still exists, whether it was the product of nature or nurture. That fathers should have exactly the same kind of attachment is much less evident."¹⁴⁹ But Bloom's acknowledgement of uncertainty as to whether maternal attachment is "the product of nature or nurture" is a dangerous concession. If mother love is not natural, but a human creation, then why are fathers not capable of developing the same kind of attachment? If Benjamin is right, the capacity to care for others is equally innate in both men and women. The difference between

145. JEAN-JACQUES ROUSSEAU, *Etat de Guerre*, in 3 OEUVRES COMPLETES 611-12 (Pleiade 1959-64), quoted and translated in ROGER D. MASTERS, *THE POLITICAL PHILOSOPHY OF ROUSSEAU* 119 n. 53 (1968).

146. BLOOM, *supra* note 50, at 114.

147. See ROUSSEAU, *Inequality*, *supra* note 36, at 121.

148. Schwartz acknowledges that the technology of birth control has made Rousseau's sexual double standard less tenable. SCHWARTZ, *supra* note 45, at 146. Rousseau's arguments about the physical necessity nature imposes on women were, however, somewhat implausible even when he devised them. He was aware that methods of contraception existed; he simply disapproved of them. ROUSSEAU, *Inequality*, *supra* note 36, at 197; ROUSSEAU, EMILE, *supra* note 37, at 44-45.

149. BLOOM, *supra* note 50, at 130.

them is that men are taught to repress this capacity, to associate it with the femininity that they must abjure.

The epistemological status of psychological science is an uncertain one, however, and many of the men we see point us toward a more discouraging conclusion.¹⁵⁰ Rousseau's modern exponents emphasize the manifest failures of the sexual revolution of recent decades: families riven by divorce,¹⁵¹ married men deserting their wives for those ephemeral erotic adventures,¹⁵² deserted and impoverished wives,¹⁵³ the appalling condition of single-parent ghetto families.¹⁵⁴ The problem of men's unwillingness to care for children is given new salience by the experience of working mothers, who still end up doing most of their families' child-care and housework, thus, in effect carrying the burden of two full-time jobs.¹⁵⁵ On the other hand, small but growing numbers of fathers are becoming very capable primary caretakers.¹⁵⁶ Perhaps more of them would do so if the structure of work did not make it so hard for a full-time worker to handle childcare responsibilities: it may not be necessary for working hours to be as inflexible as they now are, or for parental leave to be so hard to get. But of course this is speculation.

The present state of the empirical debate is illustrated by the following exchange. When Bloom presented parts of his then-forthcoming *The Closing of the American Mind* to the Yale Legal Theory Workshop,¹⁵⁷ Professor Rogers Smith pressed him on his claim that the project of inducing men to "care" for their children "must inevitably fail," because such "caring" has no basis in the passions.¹⁵⁸ Smith observed that his own experience as a father had taught him that small children have certain charms which can exert a powerful influence over adult men. Bloom admitted that *some* men will care for their children, but reiterated his basic point: many more will exhibit a degree of callousness that was far rarer in the old, tradition-bound culture.

There does not appear to be any knock-down argument that will dispose of either of these positions, and a skeptic might conclude that Smith (like Okin) has ultimately made an existential leap into the party of hope, while Bloom has made his into the party of fear. To show what can be realized requires other methods. The answer must be lived. But political

150. Michael Walzer acknowledges that, whatever the flaws of the communitarian critique of liberalism, its enduring appeal reflects genuine and permanent disintegrative tendencies in modern life. Michael Walzer, *The Communitarian Critique of Liberalism*, 18 POL. THEORY 6 (1990).

151. See BLOOM, *supra* note 50, at 118-21.

152. See GILDER, *supra* note 62, at 53-54; BLOOM, *supra* note 50, at 131-32; SCHLAFLY, *supra* note 62, at 27, 80.

153. See SCHLAFLY, *supra* note 62, at 76.

154. See GILDER, *supra* note 62, at 79-85.

155. See ARLIE HOCHSCHILD, *THE SECOND SHIFT: WORKING PARENTS AND THE REVOLUTION AT HOME* (1989).

156. See KYLE PRUETT, *THE NURTURING FATHER* (1987).

157. The parts became pages 62-137 of the book. The workshop was held on February 5, 1987.

158. See BLOOM, *supra* note 50, at 129.

theory can show which is the worthier aspiration. The idea of sexual relationship as a commitment forthrightly entered into by rational beings is simply more attractive than a system of (unilateral or mutual) domination and deception.¹⁵⁹ If the "spirit of generosity" associated with family life is a genuine good, then people will understand it to be so, and they will not need to be manipulated toward it. Manipulation may even get in the way. In short, Okin's defense of sex equality is incomplete. Justice is not the only consideration that supports the equality of the sexes.

159. To the extent that Bloom portrays Rousseau as promoting the former rather than the latter ideal, he is misreading him and indeed making him resemble Hegel. See Bloom, *Rousseau on the Equality of the Sexes*, *supra* note 120, at 85-86.