

Feminism and Multiculturalism

1. Equality: Form and Substance

In his theory of justice, Rawls argues that treating the members of a society as free and equal—achieving fair cooperation among persons thus understood—requires much more than ensuring that everyone has the same set of legal rights and faces the same set of legal opportunities. Such “formal equality” is not enough when it comes to treating people as equals. That’s because people’s real circumstances are so different: some are born into social advantage, and some are endowed (let’s say) with abilities—or a relative ease in acquiring abilities—that command a high price in the market. As Blake said, “some are born to sweet delight, some are born to endless night.”¹ Given these real differences, fairness to individuals as free and equal moral persons requires much more than formal equality of rights and legally-defined opportunities because people will be so unequally able to make use of these rights. Though endowed with equality of rights and liberties, individuals will be able legitimately to complain that social arrangements do not fully acknowledge their equal importance—as persons with a capacity to make something good of their lives.

In addition to ensuring equal rights, then, we need to respond to real differences in social and natural circumstances through laws and policies that establish fair equality and the satisfy the difference principle. According to Rawls,

¹ “Auguries of Innocence”

the fundamental requirement that we be fair to people as free and equal—that we show them respect as such—demands no less.

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

2. Further Beyond Formal Equality: Incentives and Preferences

But does it demand more? GA Cohen has argued that it does, in the case of economic justice. Rawls's view, he says, is insufficiently egalitarian, and the limits on its egalitarianism come from its failure to see that principles of justice founded on the equality of persons apply not only to our laws and institutions but also to the preferences that guide our conduct. By excluding the personal from the political—taking preferences and values as given—Rawls ends up accommodating injustice within the core of his theory of fair distribution. (The same general criticism applies to Dworkin as well.)

Thus, consider Rawls's idea that sometimes justice permits inequalities because the inequalities are needed to improve the conditions of the least well-off. In particular, justice requires (or at least permits) the use of incentives to individuals with scarce talents if the incentives motivate them to use the talents in ways that benefit the least well-off. So suppose we start with an equal distribution of (4,4), and can move to (9,5) or to (8,6). The difference principle requires that we move to (8,6). But why not (7,7)? Why not equality, at a higher level, and raise the well-being of the least-advantaged group even more?

The answer is straightforward: if we reduce the incentives, the better off person will not be prepared to take the job, and that will reduce the benefits to the least advantaged. So *given the preferences of the person with the scarce and productive talent*, we can't achieve equalization at the higher level. Holding preferences fixed—treating the personal, so to speak, as prior to the political—the inequality is necessary to improving the conditions of the least advantaged.

To clarify the point, let's distinguish two cases. First, the person with the scarce talent is perfectly willing to use it for a reward of 7. But others don't know this. He knows he can get more by insisting on it, and threatening to refuse to do it. Because others don't know that he would really do it for 7, the threat is credible, and he is able to get the additional reward. In the second case, the person really would not do the work for less than 8. Let's say that the work is being a surgeon, and the person would prefer to be a poet. With sufficiently large reward, he will be a surgeon, but he would refuse for a smaller reward.

Whatever we wish to say in the first case, it seems clear that Rawlsian justice permits the incentives in the second case. As citizens—moved in our political decisions by a sense of justice—we vote for a tax/transfer system that ensures the maximum benefit to the least advantaged. But in the marketplace, we pursue our own self-interests. So when we make decisions about how to set the level of taxes and benefits, we do so on the assumption that, as economic actors, we may well have a different set of personal motives and principles than those we have in the political arena, as democratic citizens.

Cohen objects to this line of thought. One way to state the objection—ultimately not the best way—is that the inequalities in the (8,6) scheme are not really consistent with the difference principle. For the difference principle says that justice only permits inequalities that are *necessary* for improving the conditions of the least advantaged. But the (8,6) inequality is not really *necessary*, because the person with the scarce talent typically *could* do the work for a smaller level of reward. The problem is that she is not willing to do it for a smaller level of reward. The surgeon would prefer being a poet to be a surgeon, and is willing to be a surgeon only if the reward is high enough. But the surgeon is typically able to be a surgeon without getting the extra reward. So the inequalities are only necessary *given* the preferences of the talented.

Moreover, Cohen adds that if people were really committed to the difference principle—which Rawls assumes to be true of people in a just society—then they would not demand the extra reward. After all, the least advantaged would be even better off if the surgeon did not demand the additional

reward. So if I am committed to the principle that inequalities are permissible only if they are necessary for improving the conditions of the least advantaged, then I will not insist on the reward.

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

² *Is Multiculturalism Bad for Women?*, p. 10.

3. Group Rights

Another line of thought that suggests that fairness to persons as free and equal demands something much more than formal equality is associated with *multiculturalism*. Now multiculturalism means many things, among them that we should understand cultural differences and perhaps celebrate them as a human good. But one more specific idea associated with multiculturalism is the idea of *group-differentiated rights*.

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

In his work on multiculturalism and group rights, Will Kymlicka distinguishes three forms of group-differentiated rights: polyethnic rights (including exemptions of the kind just noted); special representation rights (e.g., legislative seats reserved for members of minority ethnic or language groups);

and self-government rights (either self-government for aboriginal groups, or a federal system that enables a national minority to control government in a province or state that it dominates).³

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

But even if group membership is of great importance for these reasons, we do not yet have a case for group-differentiated rights. Someone might argue that we acknowledge the importance of membership by protecting rights of association. Why won't the assurance of such rights suffice for enabling people to preserve the cultures they value? Why group-differentiated rights? Why isn't that more than equality requires?

In essence, the rationale for such rights is that simply providing rights of association may well result in unfair burdens of members of minority cultures.⁵

³ *Multicultural Citizenship*, pp. 26-33.

⁴ *Multicultural Citizenship*, chap. 5.

⁵ *Multicultural Citizenship*, chap. 6.

Consider again the case of exemptions (like the exemption from the headgear regulation): the minority group is faced with the choice of either violating a basic religious precept or establishing a separate system of schools, and it may lack the resources to establish such schools. Or consider a linguistic minority (say, French-speaking Canadians): the language may be closely associated with a distinct culture. But it may be very difficult to preserve the language and thus the culture if the state conducts all its business (including education) in the majority language. Okin summarizes the argument this way: “Cultural minorities need special rights, then, because their cultures may otherwise be threatened with extinction, and cultural extinction would be likely to undermine the self-respect and freedom of group members. *Special rights, in short, put minorities on an equal footing with the majority.*”⁶

We might describe this line of argument as a *liberal* case for group rights: the argument for the rights is founded not on the intrinsic importance of groups or of group diversity, but on values of individual autonomy and self-respect. So as the Rawlsian argues that the ideal of fair cooperation among free and equal persons—when confronted with real differences of social circumstance—requires something more than a framework of equal liberties and an absence of legal barriers to opportunity, so the liberal case for multiculturalism extends the case that equality is not sameness: given the social realities of group life, treating people as equals requires special rights for some minorities. Differential treatment does not violate equality: it is demanded by equality.

⁶ *Is Multiculturalism Bad for Women?*, p. 20.

4. Limits

Assume that this case for group-differentiated rights is sound: that such differences are consistent with treating people as equals. Surely there must also be some restrictions on those rights. Suppose for example that a group calls for an exemption from school attendance requirements for children in the group; or for girls. Or suppose it says that leaders of the group should be exempt from laws against murder, or assault, or theft—that they need to be able to act as they wish in order to keep the group together.

To be sure, there are complicated cases here: say, when a religious group calls for an exemption from requirements of medical treatment. But as a general matter, the case against group-differentiated rights when those rights are inconsistent with the entitlements of individuals to equal liberties seems very strong. After all, the reason for supporting group-differentiated rights in the first place is that such rights are requirements of fair treatment of persons, understood as free and equal. But then we should resist extending group rights in cases in which the rights are in conflict with other fundamental requirements of such treatment. So it is one thing to permit an aboriginal group—or a linguistic minority—to govern its own affairs, but quite another to permit the group to ban movement by members outside the territory it controls, or to ban religious conversion within the territory.

5. Gender and Culture

Susan Okin's critical reflections on group-differentiated rights present a deepening of this general concern. Okin begins her criticisms of group-differentiated rights from a premise that she identifies as feminist: that "women should not be disadvantaged by their sex . . . that they should have the opportunity to live as fulfilling and as freely chosen lives as men."⁷ Just as opportunities should not be fixed by class background, according to the fair equality principle, so, too, they should not be fixed by sexual differences.

This principle ought to prompt caution in extending rights to cultural minorities in liberal democracies, Okin urges, because cultures are typically patriarchal: in doctrine and practice, they deny the principle that women are to be treated as equals. In religious teachings, in practices of polygyny, in ideas about honor crimes, in cultural defenses: Okin covers a wide range of examples that are meant to illustrate the thesis that "Most cultures are patriarchal . . . and many (though not all) of the cultural minorities that claim group rights are more patriarchal than the surrounding cultures. So it is no surprise that the cultural importance of maintaining control over women shouts out at us in the examples given in the literature on cultural diversity and group rights within liberal states."⁸ Or, more simply, "most cultures have as one of their principal aims the control of women by men."⁹

These are strong claims, and I think it is fair to say that Okin does not defend them carefully. But this limitation does not conflict with what her central

⁷ *Is Multiculturalism Bad for Women?*, p. 10.

⁸ *Is Multiculturalism Bad for Women?*, p. 17.

⁹ *Is Multiculturalism Bad for Women?*, p. 13.

point, which might be stated as follows: viz. that proponents of group-differentiated rights have been inattentive to conflicts between such rights and the principle that women and men are to be treated as equals. Whether the conflicts are pervasive or not, they need to be attended to.

And Okin suggests two forms of attention: first, when the patriarchal character of the culture is explicit—when the group openly aims to prevent women from exercising their equal rights, as citizens—then the group ought not to receive group-differentiated rights: otherwise, the state lends its support to a denial of equal treatment. Second, when the culture is less explicitly patriarchal, but still endorses views about sex roles that disadvantage woman—when the sex discrimination is “less overt,” and practiced in the “private sphere”—we ought still to resist the extension of special group rights. Because domestic practices may be important in sustaining sexual inequality, we cannot simply look aside from them in deciding whether to extend special rights: once more, the personal is political in its bearing on the justice of the society.

Okin is not suggesting a ban on patriarchal religious or cultural traditions, but only that patriarchal groups not get special group rights. Indeed, the point is actually more subtle: in deciding whether to extend special rights, the “degree to which each culture is patriarchal and its willingness to be less so” ought to be taken into account. It need not be the sole consideration, but it is a “crucial” consideration, so the stakes are high: there are some circumstances, we are assuming, in which groups make claims for special rights because their continued existence depends on those rights. Okin’s point is that in some cases,

those rights ought not to be extended, even if the result is that the group substantially transforms its practices or disappears. Preserving the culture may be important to autonomy and self-respect, but so is equality for men and women, and it would be a mistake to simply privilege the former over the latter. Justice may demand that members find other group affiliations.