

## **Closer But Still No Cigar: On the Inadequacy of Rawls's Reply to Okin's "Political Liberalism, Justice, and Gender"**

For over a decade now, Susan Moller Okin has been one of the leading proponents of a liberal feminism that has sought to draw on central aspects of John Rawls's groundbreaking text, *A Theory of Justice*<sup>1</sup> (hereafter "*Theory*"), to challenge the gender-structured character of contemporary society. She likewise has given high praise to Rawls for his efforts since the publication of *Theory* to make his thought even more amenable to employment by feminists. Gone are gendered references to "men" and "mankind," as well as his assertion that the parties to the original position—the hypothetical situation in which fair principles of justice are chosen—are heads of households. He explicitly adds a person's sex to the list of morally irrelevant contingencies not to be known within the original position in "Fairness to Goodness," and in "The Basic Structure as Subject," he includes the family in the basic structure of society, that is, as one of "society's main political, social, and economic institutions," to which the principles of justice are to apply.<sup>2</sup>

Yet, in "*Political Liberalism, Justice, and Gender*," Okin's praise for Rawls is replaced by acute dissatisfaction with more recent developments in his thought, which she takes to be a significant step backward with regard to its application to the question of justice for women. This becomes evident, she asserts, by examining his treatment of the family within *Political Liberalism*. For although Rawls still regards it as part of the basic structure, he nonetheless equivocates concerning whether it in fact should be subject to the principles of justice. It is thus none too clear exactly what rights, if any, women are to have within the confines of the household. This being so, Okin argues, Rawls ends up effectively ignoring the manner in which the internal dynamics of the

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<sup>1</sup>John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971).

<sup>2</sup>John Rawls, *Political Liberalism* (hereafter "*PL*") (New York: Columbia University Press, 1993), p. 11. See also John Rawls, "Fairness to Goodness," in *Collected Papers*, ed. Samuel Freeman (Cambridge, Mass.: Harvard University Press, 1999), pp. 267-85; and "The Basic Structure as Subject," in *PL*, pp. 257-88.

family disproportionately place women in positions of inequality and vulnerability, which in turn leads him to overlook how this restricts the ability of women to be free and equal citizens within the purview of the political sphere.

What is potentially most damaging to Rawls is Okin's contention that these oversights render his political liberalism highly questionable as a means of articulating how to develop a well-ordered society that can be stable over generations. Given that the main impetus behind the developments in his thought since his "political turn" in the mid-1980s has been to address the stability problem in *Theory*, this is a serious contention indeed: one that he rightly has not been content to let lie.<sup>3</sup> In his most recent writings, he not only has provided a direct response to Okin's criticisms but also has taken his thought in a provocative direction that can be drawn on to substantively fill out this response. Nevertheless, I suggest that Rawls still fails to adequately reply to Okin. After taking account of the main thrust of Okin's critique of Rawls (section 1), I will summarize his direct response thereto (section 2) and then examine how a key feature of his most recent work—his discussion of the idea of reconciliation—serves to bolster it (section 3). We will see, however, that even this bolstered response comes up short (section 4).

## 1.

Okin, as I see it, provides three objections against Rawls regarding his political liberalism: (O<sub>1</sub>) He fails to account for the essential role the family plays in the moral development of children as future citizens—this being essential to the establishment of a stable, well-ordered society—and thereby does not address how gender inequality in the household undermines such stability; (O<sub>2</sub>) his equivocation over whether the principles of justice apply to the family threatens to curtail the political autonomy of women, which opens the way for their subjection to the sort of undue political coercion political liberalism is expressly intended to prevent; and (O<sub>3</sub>) his consideration of citizens of faith who adhere to traditionalist religious views (such citizens hereby being referred to henceforth as "traditionalists") as reasonable compromises the freedom

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<sup>3</sup>This stability problem arises insofar as Rawls fails within *Theory* to take seriously that the development of a pluralistic society is "the normal result of the exercise of human reason within the framework of the free institutions of a constitutional democratic regime" (*PL*, p. xvi). Whereas he proposes in *Theory* that all citizens have the capacity to endorse a substantively liberal position akin to what he later calls a comprehensive liberal doctrine, in *PL* he argues more minimally that citizens with a wide variety of comprehensive moral, religious, and philosophical perspectives can endorse liberalism merely as a means to guide political pursuits.

and equality of women as citizens.

(O<sub>1</sub>) In *Theory*, Rawls explicitly argues that the family plays the key role in the moral development of children during their most impressionable years: in their acquiring a sense of justice that gives them the capacity (as free and equal citizens) to understand, apply, and act in accordance with a conception of justice that promotes fair terms of cooperation.<sup>4</sup> Such an acquisition is a necessary condition for the establishment of a well-ordered society. This being so, Okin notes, it is abundantly clear just how important it is for the family not to be gender-structured. For to the extent that gender inequality exists within the household, the capacity for girls to come to regard themselves as free and equal citizens and for boys to learn to abide by terms of cooperation that are fair to women is stunted, thus precluding the formation of a well-ordered society.<sup>5</sup>

In *Political Liberalism*, however, Rawls gives scant attention to the question of moral development. Rather than relying, as Okin puts it, upon a robust account of “parent-child love, trust, affection, example, and guidance”<sup>6</sup> as he does in *Theory*, he proposes instead that the degree of moral development necessary for social stability in a well-ordered society—this entailing the inculcation of values endemic to the public political culture of a democratic society and of citizens’ civic rights and liberties—can be acquired by and large through civic education.<sup>7</sup> Okin argues, however, that this conveniently allows Rawls to avoid even having to acknowledge that gender inequality is a significant inhibitor to such stability. As such, his updated account of moral development is not only “truncated and unconvincing”<sup>8</sup>; given his earlier discussion of the crucial role the family plays in this regard, his failure to question how a well-ordered society can be established without combating gender inequality also marks a distinctive lacuna within his recent thought.<sup>9</sup>

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<sup>4</sup>Rawls, *Theory*, § 70.

<sup>5</sup>According to Okin, substantiating that the family—or, indeed, any institution within the basic structure of society—is gender-structured is sufficient to conclude that it is marked by gender inequality. For, given the misogynistic sociohistorical development of the idea of gender, the specification and effective operationalization of gender roles in and of itself entails the portrayal of women as inherently unequal. Thus she maintains that the best means to perpetuate just conditions within the family ultimately is to bring about a more or less “genderless” society. See Susan Moller Okin, *Justice, Gender, and the Family* (New York: Basic Books, 1989), pp. 3-6 and 170-80.

<sup>6</sup>Susan Moller Okin, “*Political Liberalism*, Justice, and Gender” (hereafter “PLJG”), *Ethics* 105 (1994): 23-43; quote from pp. 32-33.

<sup>7</sup>Cf. *PL*, pp. 199 f., and *Justice as Fairness: A Restatement* (hereafter “*Restatement*”) (Cambridge, Mass.: Harvard University Press, 2001), p. 156.

<sup>8</sup>“PLJG,” pp. 34-35.

<sup>9</sup>As Okin remarks, “If these families are ... frequently *not* environments in which justice is normally practiced, work equally shared, and people treated with equal dignity

(O<sub>2</sub>) Rawls insists, moreover, much more strongly on the public and political nature of the institutions that make up the basic structure of society and suggests that the family, because it is constituted on “affectional” grounds, may not require thoroughgoing regulation according to the principles of justice.<sup>10</sup> Although the family is included in the basic structure, it harbors nonpolitical characteristics that perhaps make it unnecessary for the principles of justice to be applied to it.

Yet, Okin asks, “How can families be both part of the basic structure and not political? Are they to have the standards of justice applied to them, or are they exempt, because based in affection? Why is it not the case that, in this institution ... the value of justice does not, as elsewhere, outweigh other values?”<sup>11</sup> If these principles are not applied to the family, the means to rectify gender inequality therein is effectively curtailed. For the unequal treatment of women within the household—whether through a sexual division of labor or outright coercion—imposes significant barriers to their access to alleviatory political outlets. What we therefore witness is a veritable seepage of the inequality women face within gender-structured families into the political sphere.<sup>12</sup> The constraints placed on their personal autonomy within the household limit their categorical right to political autonomy as well. And insofar as Rawls maintains that “our exercise of political power is fully proper only when it is exercised in accordance with a constitution the essentials of which all citizens as free and equal may reasonably be expected to endorse,” women are in considerable jeopardy of being victims of precisely the sort of undue political coercion he seeks to prevent.<sup>13</sup>

(O<sub>3</sub>) Given his insistence in *Political Liberalism* upon the normal sociohistorical development of a pluralism of comprehensive moral, religious, and philosophical doctrines within democratic societies, Rawls argues for the need to show tolerance toward citizens who maintain values different from one's own, so long as these citizens are reasonable. Who is to be considered reasonable is determined by whether they (1) seek and abide by fair terms of cooperation and (2) accept that reasonable disagreement will nonetheless persist. Rawls does assume, admittedly optimistically, that both criteria can be met by traditionalists—or those who adhere to religious creeds that (broadly

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and respect—if they are often instead places where injustice ranges from moderate unfairness to outright abuse, then how are children to develop the sense of justice that they need if the well-ordered society is to be stable?” (ibid., p. 38).

<sup>10</sup>Cf. *PL*, p. 137.

<sup>11</sup>“PLJG,” pp. 26-27.

<sup>12</sup>Cf. Susan Moller Okin, “Feminism and Multiculturalism: Some Tensions,” *Ethics* 108 (1998): 661-84, in particular p. 678.

<sup>13</sup>*PL*, p. 137.

speaking) require their followers to accept the truth of an authoritatively delineated set of core doctrines, which are regarded as originally derived from divine revelation and most effectively transmitted by means of adherence to proper traditions.<sup>14</sup> For although such citizens often “oppose the culture of the modern world,” or at least certain key elements thereof, there is little need to curtail their wider practices so long as they abide by fair terms of cooperation within the political sphere.<sup>15</sup>

As Okin notes, however, “one aspect of modernity that [citizens of] these sects often reject is the trend toward sex equality; typically highly patriarchal, they advocate and practice dependency and submissiveness of women.”<sup>16</sup> This, indeed, is often central to their religious identity. It may be true that they can seek politically fair terms of cooperation, but this nonetheless leaves them free to “hold views such as that there is a fixed natural order or a ‘hierarchy justified by religious or aristocratic

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<sup>14</sup>This description of traditionalism is, I hope, general enough to avoid being overly controversial. Traditionalism, importantly, is not to be confused with fundamentalism. The latter term usually refers to the most conservative wing of the former. Among the most consistent commitments maintained by adherents of the various strains of fundamentalism, Bruce Lawrence argues, is opposition to modern (i.e., Enlightenment) values. See *Defenders of God: The Fundamentalist Revolt Against the Modern Age* (Columbia: University of South Carolina Press, 1995). This, I suggest, is a position also held—to some degree—by a good number of traditionalists. Yet, unlike traditionalism, fundamentalism also often involves strongly opposing the practices of and even confronting both secularists and “wayward” religious adherents. Consider, for example, the stance maintained by members of groups as otherwise diverse as the Christian Coalition, Haredi (or ultra-orthodox Jewish) sects, and Islamist political movements that champion the creation of theocracies. Given that fundamentalists are clearly unwilling either to abide by fair terms of cooperation or to acknowledge the burdens of judgment, regarding them as unreasonable is entirely uncontroversial even for Rawls.

<sup>15</sup>*PL*, p. 199. Rawls is here concerned primarily with sects (e.g., the Amish) that seek to withdraw from modern life and live together in semi-autonomous enclaves. But given the wider scope of the text from which this passage is taken—a discussion of the need for some degree of civic education even for children living in such sects—it easily applies equally to traditionalist faiths that, despite the opposition of their followers to key aspects of modern culture (including, notably, the women’s and GLBT movements) nonetheless do not seek to withdraw from it. For helpful discussions of such faiths, see Charles Kraft, *Christianity with Power: Your Worldview and Your Experience of the Supernatural* (Ann Arbor, Mich.: Servant, 1989); and Alister McGrath, *A Passion for Truth: The Intellectual Coherence of Evangelicalism* (Downers Grove, Ill.: InterVarsity Press, 1996).

<sup>16</sup>“PLJG,” p. 31. In speaking here of “these sects,” Okin is referring to those that are orthodox in nature. The orthodox religiosity with which she is concerned is, I take it, analogous to traditionalism. Given, as I suggest in the previous note, that Rawls’s discussion of those who oppose the culture of the modern world can be extended with little difficulty to include even those who do not seek withdrawal from it, it is clear that the set of citizens of faith with which he is primarily concerned coincides to a considerable degree with the set with which Okin too is concerned.

values' within the purview of household.<sup>17</sup> By limiting the scope of reasonability to the political behavior of traditionalists, Rawls thereby grants them the liberty still to constrain the activities of women in the home. In so doing, he permits the political disenfranchisement of women as *de jure* free and equal citizens—which, as we will see, effectively reanimates O<sub>1</sub> and O<sub>2</sub>.<sup>18</sup>

## 2.

As is often the case when answering his critics, Rawls provides a genuinely amicable response to Okin. In §5 of “The Idea of Public Reason Revisited” and again in *Justice as Fairness: A Restatement*, IV.50, he devotes several pages to reply directly to her criticisms.<sup>19</sup> This makes evident just how powerful Rawls takes these criticisms to be, and he does his best to meet them in a manner not only befitting their force but, moreover, that is fully consistent with the direction his thought has taken since his political turn.

The family, Rawls once again proclaims, is indeed among the most important of the institutions within the basic structure, given its function in the orderly production and reproduction of society over generations. The family plays the central role in the moral development of children—a development so vital that ensuring its occurrence may even require the limitation of fair equality of opportunity under certain circumstances.<sup>20</sup>

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<sup>17</sup>Ibid, p. 29. Concern over issues such as this has led some critics to accuse Okin of being opposed outright to freedom of religion. Yet, her response to this critique reveals that this is not the case. See Susan Moller Okin, “Reply,” in *Is Multiculturalism Bad for Women?* ed. Joshua Cohen, Matthew Howard, and Martha C. Nussbaum (Princeton: Princeton University Press, 1999), pp. 115-31. She, like Rawls (as will become evident), is a so-called “separationist” with regard to her interpretation of the Establishment clause in the First Amendment.

<sup>18</sup>Okin notes, interestingly, that Rawls deems unreasonable adherents of comprehensive doctrines that promote “the repression or degradation of certain persons on, say, racial, or ethnic, or perfectionist grounds,” (*PL*, p. 196). But he sets no concomitant limits regarding the treatment of women. As such, he fails to “apply the same strict criteria of reasonableness to comprehensive doctrines that involve considerable gender inequality that he does to those that treat individuals differently on racial or ethnic grounds,” (“PLJG,” p. 31). Martha Nussbaum defends Rawls against Okin on these grounds in “Rawls and Feminism,” *The Cambridge Companion to Rawls*, ed. Samuel Freeman (New York: Cambridge University Press, 2003), pp. 488-520, in particular pp. 507-11. Yet, this defense fails to acknowledge the full force of Okin’s claims.

<sup>19</sup>John Rawls, “The Idea of Public Reason Revisited,” in *Collected Papers*, pp. 573-615 (hereafter “‘Idea’”). As Martha Nussbaum notes, he also gives Okin high praise in an unpublished manuscript from 1994. See “Rawls and Feminism,” p. 488.

<sup>20</sup>Cf. *Restatement*, p. 163, including n. 44. In advocating limitations to fair equality of opportunity, Rawls is not proposing that *women’s opportunities* be curtailed. Rather, he

The orderly perpetuation of a well-ordered, stable society—and the role of the family therein—takes precedence in this regard.<sup>21</sup>

This process is, to be sure, inhibited by the current gender-structured character of the family, Rawls notes. The principles of justice thereby *must* be applied to it, when necessary, to rectify this situation:

A long and historic injustice to women is that they have borne, and continue to bear, an unjust share of the task of raising, nurturing, and caring for their children. When they are even further disadvantaged by laws regulating divorce, this burden makes them highly vulnerable. These injustices bear harshly not only on women but also on their children; and they tend to undermine children's capacity to acquire the political virtues required of future citizens in a viable democratic society. Mill held that the family in his day was a school for male despotism: it inculcated habits of thought and ways of feeling and conduct incompatible with democracy. If so, the principles of justice enjoining a reasonable constitutional democratic society can plainly be invoked to reform the family.<sup>22</sup>

Rawls provides few details concerning what measures are to be taken to redress this state of affairs. How best to do this, he maintains, is outside the scope of political philosophy. But that it must be rectified is beyond doubt.<sup>23</sup> As such, the political sphere and the household are not two mutually exclusive domains. Members of families are “equal citizens first: that is their basic position. No institution or association in which they are involved can violate their rights as citizens ... The equal rights of women and the basic rights of their children as future citizens are inalienable and protect them wherever they are.”<sup>24</sup> If male members of households undermine the equal citizenship of their wives, sisters, and

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indicates that it may be necessary, for example, to alter the Equal Employment Opportunity codes to give parents privileged access to jobs in which daycare is available or to provide certain forms of tax relief that make childrearing more financially bearable. Limitations on equality of opportunity subsequently can be rectified through employment of the difference principle, i.e., through the compensation of those whose opportunities are constrained.

<sup>21</sup>Rawls does nonetheless continue to maintain, in accordance with what he calls the “wide role of the political conception of justice,” that the task of educating children—specifically regarding the values of the public political culture—belongs to the state (cf. *Restatement*, pp. 56, 147, 157).

<sup>22</sup>*Restatement*, p. 160.

<sup>23</sup>Rawls does argue that childrearing entitles women to an equal share of family income; should there be a divorce, they deserve an equal share of the increased value of the family's assets (cf. “Idea,” p. 600). We can, moreover, imagine the implementation of other such policies that could encourage equality within the family. Through the manipulation of rules on family leave, for example, a more equitable division of childrearing responsibilities could be developed. Each parent could receive  $x$  months of paid leave upon the birth (or adoption) of a child but only if the father takes  $y$  time off. If he does not, then the couple would receive  $x$  minus  $y$  paid leave or a lesser percentage of the promised salary. For other such policy proposals, see chapter 8 of *Justice, Gender, and the Family*. I thank Eva Kittay for helpful discussion of this issue.

<sup>24</sup>“Idea,” p. 598.

daughters, the state is obligated to intervene. Nothing less depends hereupon than the possibility of establishing a stable, well-ordered society.<sup>25</sup>

O<sub>1</sub> thereby can be met, Rawls argues, by requiring greater involvement of the state in matters of the household, when the family is structured in such a way that it disrupts the appropriate moral development of children. So too he is clear, in response to O<sub>2</sub>, that the principles of justice apply to the family to the extent that infringements upon the personal, and thereby the political, autonomy of women occur. In this regard, then, there would seem to be good reason for Okin to willingly endorse political liberalism. Yet, it is with respect to O<sub>3</sub>, to which Rawls inexplicably fails to reply, that he runs into problems.

### 3.

In addressing the question of stability, Rawls discusses the nature of what he calls the “political relationship” that gives rise to the political values particular to a “freestanding” politically liberal conception of justice—that is, a conception that presupposes no particular comprehensive doctrine and that thereby can be accepted by adherents of a wide array of doctrines.<sup>26</sup> The political relationship, he notes, has two distinctive features. First, it is a relationship of persons *to the social world* within the basic structure of society. The basic structure both frames and delimits the bounds of our social world. Second, it is a relationship of persons *to the state*, marked by the requirement—in a democratic regime—that the employment of state power must always be collectively legitimized by citizens. Citizens, in this sense, are both authors of and subject to the political power that is to apply to them equally.

We have seen that Okin is deeply concerned with both aspects of the political relationship, at once with the enduring gender-structured character of our social world and also with the inclusion of traditionalists in what Marilyn Friedman calls the “legitimation pool”: the pool of citizens who make up the collective body whose support is required to affirm the legitimacy of the use of political power.<sup>27</sup> Not only, Okin

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<sup>25</sup>Rawls leaves room for the voluntary acceptance by women of a gendered division of labor, so long as it does not result in injustice. For his discussion of what counts as voluntary, see “Idea,” p. 599, n. 68. It is not warranted, for example, simply because it is less costly, as Gary Becker suggests in “Nobel Lecture: The Economic Way of Looking at Behavior,” *Journal of Political Economy* (1993): 385-409.

<sup>26</sup>For Rawls's discussion of the political relationship, see *PL*, pp. 135-36, and *Restatement*, pp. 182-83.

<sup>27</sup>Marilyn Friedman, “John Rawls and the Political Coercion of Unreasonable

argues, does the existing social world inhibit the development of gender equality and thereby a stable, well-ordered society, but the inclusion of traditionalists in the legitimation pool serves to uphold the most problematic aspects of the social world by allowing for the perpetuation of gender inequality within the household and, by consequence, within the political sphere. Rawls's replies to  $O_1$  and  $O_2$  may appear to hit the mark, but in failing to adequately address  $O_3$  he still ends up promoting a political conception of justice that is profoundly at odds with justice for women. More to the point, his silence with regard to the third objection effectively reanimates the first two objections. For insofar as the accepted household practices of traditionalists—precisely the sort of practices, as Okin argues, that perpetuate conditions of gender inequality within the family and undermine the political autonomy of women—are allowed to continue unabated within political liberalism, the replies he provides to  $O_1$  and  $O_2$  ultimately ring hollow. Their force is undercut by his unwillingness, as it were, to push his argument to its logical limit.

Rawls has a means to respond to Okin arising from his discussion of the idea of reconciliation. Coinciding with the two features of the political relationship, reconciliation itself has two forms: ( $R_1$ ) to our social world and ( $R_2$ ) to one another as equal citizens through the use of public reason.

( $R_1$ ) In describing how we can reconcile ourselves to our social world, Rawls draws upon Hegel's claim from *Elements of the Philosophy of Right* that "the free will is the will that wills itself" as a free will.<sup>28</sup> This involves the recognition that a scheme of social and political institutions that would allow us to express our freedom—that is, to have our dignity affirmed through our social practices—can be feasibly established given the scheme of institutions that currently exists. Our social world already contains within itself the means for us to will ourselves as free. The task of political philosophy, then, is to comprehend this scheme in thought. For it is through such comprehension that we can come to accept it as worthy of our endorsement.

Rawls notes, however, that the idea of reconciliation should not be confused with that of resignation. He is not requesting that either traditionalists or Okin submit to social conditions under which their dignity is not currently or has no potential to be affirmed.<sup>29</sup> For the aim

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People," in *The Idea of a Political Liberalism*, ed. Victoria Davion and Clark Wolf (Lanham, Md.: Rowman & Littlefield, 2000), pp. 16-31, in particular p. 16.

<sup>28</sup>This, Rawls notes, combines aspects of §§ 10 and 27 of *Elements of a Philosophy of Right*, ed. Allen W. Wood (New York: Cambridge University Press, 1991 [1821]). I here draw upon Rawls's discussion of Hegel in *Lectures on the History of Moral Philosophy* (Cambridge, Mass.: Harvard University Press, 2001), pp. 329-48 (hereafter "*Lectures*").

<sup>29</sup>Cf. *Lectures*, p. 331, and *Restatement*, p. 3. This coincides, incidentally, with Hegel's defense of the well-known claim in *Elements of a Philosophy of Rights* that "What is rational is actual; and what is actual is rational" (p. 20) in *Encyclopedia Logic*,

of reconciliation is to aid in devising precisely those means by which to bring into concrete existence the elements that can allow citizens to express their freedom to its fullest extent. It is thereby not society as it is but society as it can be—the well-ordered society—that, on Rawls's account, provides ample room for the affirmation of the dignity of *both* parties.

With respect to traditionalists, Rawls seeks to show that the basic institutions of the modern democratic state affirm their dignity insofar as it is precisely the existence of these institutions that allows them to freely practice their chosen religion. To be sure, a large contingent of such citizens regard perhaps the most notable such institution, the separation of church and state, as a significant inhibitor thereto.<sup>30</sup> Nevertheless, noting the violence resulting from religious intolerance following the Reformation (i.e., prior to the institutionalization of the separation of church and state), Rawls argues that this reflects a failure by them to recognize how that which they decry in fact serves to protect freedom of religion, hence their very capacity to will themselves as free.<sup>31</sup>

Moreover, Rawls indicates that it is in the best interest of traditionalists to accept the reforms Okin recommends to combat gender inequality, insofar as these reforms serve to ensure the orderly perpetuation of precisely the sort of society that upholds the institutions that safeguard freedom of religion. Such freedom, of course, must be circumscribed when it promotes gender inequality, but this is far outweighed by the risks to stability that *not* enacting such reforms could engender. For, Rawls notes, “The point here is that the treatment of children must be such as to support the family’s role in upholding a constitutional regime.”<sup>32</sup> At stake is the preservation of “the basic framework of social life—the very groundwork of our existence,” delineated by the public political values of democratic society. Given their weight, these values are “not easily overridden” even by compelling comprehensive interests.<sup>33</sup> The capacity of traditionalists to accept *this* claim is, by all appearances, that which makes them reasonable. This being so, their reasonability does not necessarily conflict with the establishment of social conditions with which Okin too could readily

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trans. T.F. Geraets, W.A. Suchting, and H.S. Harris (Indianapolis: Hackett, 1991 [1830]), § 6.

<sup>30</sup>Such prominent public figures as, for example Justices William Rehnquist and Clarence Thomas, Senator Joseph Lieberman, and former attorney general Edwin Meese have called into question the so-called “separationist” interpretation of the Establishment clause. They opt instead for an “accommodationist” interpretation, whereby it is regarded to be the case that the only action prohibited by the First Amendment is the establishment of an official state religion.

<sup>31</sup>Cf. “Idea,” p. 603.

<sup>32</sup>*Restatement*, p. 165, n. 47.

<sup>33</sup>*Ibid.*, p. 189.

reconcile.

(R<sub>2</sub>) Given the outcome of (R<sub>1</sub>), it is now possible to see why traditionalists are worthy of inclusion in the legitimation pool. The second form of reconciliation, remember, is that which can occur between equal citizens through the use of public reason; and it too has two distinctive aspects. First, it identifies the fundamental role of the political values in expressing fair terms of cooperation that are consistent with established bases of mutual respect between free and equal citizens. Insofar as this criterion can be met by traditionalists through their acceptance of these values as not easily overridden, Rawls notes, their reasonability does not necessarily pose a threat to the establishment of justice for women. Second, it reveals that there can be a "sufficiently inclusive concordant fit" among the political and comprehensive values that citizens maintain. This in turn entails that the development of a "reasonable overlapping consensus" with regard to a politically liberal conception of justice between adherents of comprehensive doctrines as different as those maintained by traditionalists and Okin is at least possible.<sup>34</sup> Given that the stability of a well-ordered society provides the best means to affirm their freedom, the sorts of public reasons traditionalists would introduce into public deliberation to support the policies they endorse would be considerably more likely to win Okin's approval; and this in turn would aid greatly in fostering reconciliation between the two parties.

#### 4.

Is this envisioned reply by Rawls adequate to meet (O<sub>3</sub>)? Given that it is both consistent with his responses to O<sub>1</sub> and O<sub>2</sub> and at least presents a coherent argument that considering traditionalists to be reasonable does not undermine Okin's attempt to combat gender inequality, it seems *prima facie* to pass muster. More telling, however, is how it measures up against the two basic criteria of stability that Rawls himself proposes:

the first is whether people who grow up under just institutions (as the political conception defines them) acquire a normally sufficient sense of justice so that they generally comply with those institutions. The second ... is whether in view of the general facts that characterize a democracy's public political culture, and in particular the fact of reasonable pluralism, the political conception can be the focus of an overlapping consensus ... of reasonable comprehensive doctrines.<sup>35</sup>

As for the latter criterion, we have seen that Rawls can make a case that

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<sup>34</sup>Cf. *PL*, pp. 157 f.

<sup>35</sup>*Ibid.*, p. 141.

traditionalists have a vested interest in endorsing the tenets of a well-ordered society—including Okin's proposed reforms. This argument would indeed seem to have to be framed (as I have done) not in terms of how justice for women would itself be of benefit to traditionalists, but instead, in terms of how they would be worse off for not pursuing it insofar as justice for women is entailed in the development of institutions that uphold freedom of religion. But indirect (and even tacit) support for the idea of justice for women is support nonetheless.

If I have represented Rawls fairly, then, it is clear that he must assume at the very least that freedom of religion is itself a basic value for traditionalists. While this assumption is hardly controversial, considerable differences are bound to remain between Rawls and traditionalists regarding what actually is entailed in the development of institutional protections of freedom of religion. Agreement regarding the form of this basic value, that is, belies continuing disagreement with respect to its content (despite Rawls's best attempts to show otherwise). For the endorsement of freedom of religion by traditionalists (and this is particularly evident within the United States) often connotes acceptance not merely of an absolute restriction on state interference in their religious practices—wherever these practices are carried out—but also of the belief that state support of at least certain forms of religious expression that do not rise to the level of the official promotion of a creed is entirely acceptable. Expression of beliefs drawn specifically from the Judeo-Christian tradition, for example, in fact are rather frequently regarded by traditionalists as deserving nothing less than full constitutional protection insofar as they are part of the very bedrock of American social and political life.<sup>36</sup>

Furthermore, Okin notes that the submissiveness of women is a core aspect of the religious identity of traditionalists. But so too, if the description provided of what exactly they accept when they endorse freedom of religion is correct, it would appear to be part of their political identity. To the extent, then, that Okin's proposed reforms invariably would conflict with their religious identity, such reforms would likewise undermine—from the perspective of traditionalists—their political autonomy. This being so, there is little reason to expect that their endorsement of a well-ordered society would be so readily forthcoming.<sup>37</sup> In all likelihood, they instead would see the promotion of

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<sup>36</sup>It is precisely this sentiment that resides, for example, behind the recent uproar over the 2-1 decision by the 9th U.S. Circuit Court of Appeals to declare unconstitutional the phrase "under God" in the Pledge of Allegiance. So too is it reflected in the ongoing attempt, begun in 1997, to pass the Religious Freedom Amendment (H.J. Res. 78).

<sup>37</sup>For a particularly helpful philosophical discussion of this issue, see William Galston, "Pluralism and Social Unity," *Ethics* 99 (1989): 711-26. For a coinciding

such a society as but one more secular humanist attempt to undermine their dignity.

Regarding the first criterion of stability, we have seen that Rawls is quite adamant that the family must be reformed if it inhibits the proper moral development of (and thereby the acquisition of a sense of justice by) children. Yet, there is a subtle equivocation between his justification of this claim and how he appeals to traditionalists in order to gain their endorsement of it. His justification entails not only that it is necessary to ensure the orderly perpetuation of society—that is, appropriate means of childrearing—but also that women are deserving of state protection simply as equal citizens. Rawls thereby seeks to justify state intervention in order to rectify abuses of women regardless of whether they are mothers or not.

We have seen, however, that Rawls treats gender inequality mainly as an instrumental inhibitor to the development of a well-ordered society in his appeal to traditionalists. The family requires reform to the extent that the moral development of children is curtailed. Yet, Okin likewise holds that gender inequality is categorically unjust, a key aspect of her argument that Rawls ignores. He thereby threatens to perpetuate the common assumption among at least some citizens of traditionalist faiths that the woman's place is primarily within the confines of the home—as attendant of progeny and hearth—and should not, qua equal citizen, extend to the political sphere. His appeal would likely play well, moreover, among yet a wider array of citizens who may well accept the inclusion of women in political life but nonetheless continue to view women predominantly in terms of their capacity to reproduce and only as an afterthought consider that they may have anything of real merit to contribute politically. Perhaps even more telling in this regard, from a philosophical viewpoint, is that Rawls's appeal directly clashes with his contention in *Theory* that utilitarianism fails precisely insofar as it treats persons merely as bearers of utility and not as deserving of respect *simpliciter*, hence of protection in accordance with the principles of justice.<sup>38</sup>

This being so, Rawls fails to adequately address O<sub>3</sub>; and, as noted, this effectively reanimates O<sub>1</sub> and O<sub>2</sub>. Even when his direct response to Okin is bolstered by drawing upon the idea of reconciliation, she viably can claim that his recent thought still represents little improvement with respect to his earlier work in providing adequate grounds for the just treatment of women, so long as he remains committed to regarding traditionalists as reasonable. Insofar as he is in his later work at least

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religious discussion, see Stephen L. Carter, *The Culture of Disbelief: How American Law and Politics Trivialize Religious Devotion* (New York: Doubleday, 1994).

<sup>38</sup>Cf. *Theory*, § 5.

more forthright that the principles of justice apply to the family, Rawls does come closer to meeting Okin's criticisms. But be that as it may, he has not earned that elusive cigar.<sup>39</sup>

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