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Responses

Ms. Aristotle

Richard A. Posner*

The enemy of my enemy is my friend. Liberalism is my enemy. Therefore Aristotle, insofar as he is antiliberal, is my friend. And my friend's ethical insights will help me show that women should serve in the armed services on terms of equality with men, while his ethical blindness and biological ignorance will help me show that surrogate motherhood is an evil.

That is Professor Hirshman's article in a nutshell—a tiny nutshell, one that fails to do complete justice to a lively, original, imaginative, and ambitious article but that suffices to pose the questions I want to discuss. The first is why liberalism should be thought antagonistic to feminism. Of course this depends on what the terms are taken to mean. Common to most forms of liberalism is a belief in personal liberty and to all forms of feminism a belief that the position of women should be improved. At this level it is hard to see why there should be any antagonism. Women have fared considerably better in liberal societies than in traditional or otherwise antiliberal ones. Liberalism fosters economic and scientific progress, which has powered the emancipation of women in modern societies. For that emancipation is mainly due to the reduction in infant mortality (no longer must a woman be continuously pregnant to have a reasonable prospect of producing children who will survive to adulthood), to the advent of household labor-saving devices, to improved methods of contraception, and to an improved understanding of the biology of sex and reproduction. Technological progress is not always emancipatory; the invention of the cotton gin, far from emancipating the slave, increased the demand for slavery. But technological progress *has* removed the principal causes of female subordination.

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Furthermore, liberalism is antagonistic to immutable status, social hierarchy, restricted entry into occupations, the tyranny of tradition, and the infusion of religious dogma into political decision making. This antagonism, and the corresponding favor with which liberals look upon competition, free entry, and social mobility, create a friendlier climate for the emancipation of women from traditional bonds and prescribed roles than the ideologies of antiliberal societies. John Stuart Mill, the patron saint of liberalism, was an ardent feminist by the standards of nineteenth-century England.¹ Aristotle, with whose aid Professor Hirshman hopes to "break the liberal frame,"² held more or less conventional views, for his time and place, concerning the status of women. He was notably less advanced, in this regard, than Euripides, Sophocles, Aristophanes, the author of the *Odyssey*, and Plato—on the evidence of the *Republic*, the first radical feminist.³

What is it, then, about liberalism that Hirshman does not like? It is the quality of abstraction, viewed as the essence of scientific realism on the one hand and of individualism on the other. Hirshman sees Aristotelian practical reason (in the sense, no longer orthodox, of a combination of the methods of reasoning and persuasion that Aristotle classified under dialectic and rhetoric)⁴ combatting abstraction on its epistemological side, while Aristotelian ethics, with its emphasis on virtue and community, does battle with the political side of abstraction. It must first be noted that the strongest link between science and liberalism (an ethical and political ideology, not an epistemology) is not a love of abstraction but a belief in the virtues of free inquiry, which is fundamental both to scientific progress and to political liberty. The philosophical tradition that emphasizes not the correspondence of scientific theories to objective reality but the importance of such scientific virtues as openmindedness, respect for evidence, rejection of dogma, diversity of opinion, intellectual independence, and

1. See generally JOHN STUART MILL, *The Subjection of Women*, in ON LIBERTY AND OTHER WRITINGS 117 (Stefan Collini ed., 1989) (1869).

2. Linda R. Hirshman, *The Book of "A,"* 70 TEXAS L. REV. 971, 1003 (1992).

3. "[T]he temperance [*sophrosynē*] of a man and of a woman, or the courage and justice of a man and of a woman, are not, as Socrates maintained, the same; the courage of a man is shown in commanding, of a woman in obeying. And this holds of all other [virtues]." 2 ARISTOTLE, *Politics*, in THE COMPLETE WORKS OF ARISTOTLE I.13.1260a20-23, at 1986, 1999 (Bollingen Series No. 71, Jonathan Barnes ed., 1984) (Revised Oxford Translation) (emphasis added). The reason, Aristotle explained, is that the deliberative part of the woman's soul, unlike the man's, lacks full command over the person. *Id.* I.13.1260a11-14, at 1999. On Aristotle's view of women (in contrast to Plato's), see also Nicholas D. Smith, *Plato and Aristotle on the Nature of Women*, 21 J. HIST. PHIL. 467 (1983); Maryanne C. Horowitz, *Aristotle and Woman*, 9 J. HIST. BIOLOGY 183 (1976); Stephen R.L. Clark, *Aristotle's Woman*, 3 HIST. POL. THOUGHT 177, 179-80, 182 (1982); Martha C. Nussbaum, *Comments*, 66 CHL.-KENT L. REV. 213, 221, 227, 230 (1990); NANCY SHERMAN, *THE FABRIC OF CHARACTER: ARISTOTLE'S THEORY OF VIRTUE* 153-54 (1989).

4. See RICHARD A. POSNER, *THE PROBLEMS OF JURISPRUDENCE* 71-72 (1990).

wide-open debate is, of course, pragmatism, which feminists, including Hirshman, have generally found congenial. Science encourages and rewards the pragmatic virtues.⁵ So for that matter does the political side of liberalism, with its ideal of tolerance for different points of view and different styles of life, its secularism, its accommodating attitude toward social and political change, and its rejection of totalizing theories of the Good and other fanaticisms. It is not in Islamic nations, such as Iran, or in India, or in tribal Africa that the liberated woman finds social, political, and economic space to pursue her heterodox personal and ideological projects. It is in the wealthy liberal states of the West.

Aristotle's thought is complex. Many of its strands nourish the liberal ideology. Hirshman, however, is consistent in using the illiberal strands to bolster her discussions of specific policies. She says that a better argument for military equality for women is not equality at all but the role of military service as "one of the rites by which the moral force of the law is brought to command the shaping of a virtuous self" or as "the quintessence of participation in the community."⁶ This assumes that it is a proper task of government to seek through coercion (universal military service) to imbue the citizenry with specific virtues, such as courage, discipline, obedience, and self-sacrifice, so that anyone who is not subjected to this program of indoctrination cannot hope to be regarded as a full-fledged citizen. This is not an absurd idea. The creation of a pervasive garrison-state mentality may make perfectly good sense for a nation that is in serious danger of being attacked. But the role of women in such a state will depend not on abstract conceptions of citizenship but on concrete considerations of where women can contribute most to the national defense—and it might be as draft labor in factories rather than at the front line. To nations such as ours, which happily do not face acute military threats at present, and in which for this and other reasons universal military training would be an enormous waste of resources, the relevance of Athenian militarism is not easy to see. We face other threats of course but I don't think a state-sponsored ideology—even if it were feasible in so politically and morally heterogeneous a society as ours, which it is not—would be a help in repelling them.

All this is not to deny that there are good reasons for admitting women to our (volunteer) armed forces on terms of equality with men. The doubts on this score were largely dispelled by the performance of our female soldiers in the Persian Gulf War. But the key is, precisely, performance, not anything to be found in Aristotle.

5. 1 RICHARD RORTY, *Is Natural Science a Natural Kind?*, in *PHILOSOPHICAL PAPERS: OBJECTIVITY, RELATIVISM, AND TRUTH* 46, 61-62 (1991).

6. Hirshman, *supra* note 2, at 994-95.

I am also unpersuaded that Aristotelian biology can be brought usefully to bear on the controversy over surrogate motherhood. Aristotle believed that the father provides the seed and the mother the soil, so that from a genetic standpoint (as we would say) the child really is the father's—the father's clone.⁷ This belief has long been understood to be erroneous, but Hirshman thinks that the same fallacy contaminates efforts to defend surrogate motherhood. Her conception of surrogate motherhood is that the father pays the surrogate mother to produce "his" child, that is, a child over whom the surrogate mother will have no parental rights. Hirshman thinks that this is like the ancient Greek view—a view indeed consistent with and supported by Aristotle's biology—that the father had sole rights over his children, so that if, for example, he divorced the mother he would have full custodial rights and she would have no rights at all.

Critical differences are overlooked.⁸ The surrogate mother rents her reproductive capacity, it is true, but she is compensated for doing so. She rents it not for life (or until the man tires of her and casts her off) but for one pregnancy. And she rents it not to the prospective father alone, but to his wife as well, who becomes the adoptive mother. Assuming as Hirshman appears to do that the three adults involved in the transaction are well-informed, mentally competent adults not acting under physical or economic coercion, both the surrogate mother and the father's wife—the two women in the picture—are made better off by the surrogacy arrangement, as is the father, and presumably the child as well, who wouldn't be born otherwise. Hirshman alludes to reasons that other feminists have given why on balance such arrangements might nevertheless make women worse off, but her own reason—that there is an analogy between surrogate motherhood and Aristotle's exploded theory of reproduction—is not a good reason, if it is a reason at all. She also has some dark words about "commodification" and the desirability of rebuilding social relations on the model of civic friendship, viewed as a halfway house between market relations and social hierarchy. She does not indicate what this might mean in practice.

Hirshman overlooks the tension between attacking surrogate motherhood by emphasizing the connectedness of the biological mother and her child and defending abortion by treating the mother and child as strangers, as in the influential article by Judith Jarvis Thomson.⁹ I do not see how

7. This is a bit of a caricature of Aristotle's view, see Johannes Morsink, *Was Aristotle's Biology Sexist?*, 12 J. HIST. BIOLOGY 83 (1979), but it is sufficiently accurate for my purposes.

8. For a fuller discussion, see my book, *SEX AND REASON* ch. 15 (1992).

9. Judith J. Thomson, *A Defense of Abortion*, 1 PHIL. & PUB. AFF. 47, 48-49 (1971) (comparing a mother to a complete stranger required to spend nine months in bed connected by tubes to a famous violinist who has a potentially fatal kidney disease); see also LAURENCE H. TRIBE, *CONSTITUTIONAL*

a feminist can simultaneously emphasize and slight the biological role of the mother in this fashion. But in any event I do not think Hirshman must, to save Aristotle for feminism, show that even his misogyny¹⁰ can be used to advance the feminist agenda. Several years ago a distinguished professor emeritus of the University of Chicago Law School, who shall remain nameless, gave an after-dinner speech at which he expressed astonishment that feminists should use Hegel's thought in the making of their theories when Hegel was such a misogynist. He should not have been astonished; there was no inconsistency. The thought of Hegel, of Aristotle, of Nietzsche—for that matter of Ezra Pound and Salvador Dali—is not a seamless web so that if you pull out one thread the whole thing unravels. You can throw away huge chunks of their belief systems without undermining the remainder. You can jettison Aristotelian biology, and Aristotle's aristocratic values, without jeopardizing what he has to say about reasoning in the face of uncertainty or about corrective justice or about the interpretation of laws. But what is left after the necessary pruning does not undermine liberalism or advance the dubious cause of antiliberal feminism.

CHOICES 243 (1985) (describing pregnant women as "incubators"—a view close to Aristotle's).

10. If that is what it should be called. Morsink thinks that Aristotle's view of the biology of men and women was the most scientific one possible given the state of science in his time. See Morsink, *supra* note 7, at 110-12.

