


SYMPOSIUM ARTICLE

Ordeals, women and gender justice

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Abstract

Rationing health care by ordeals is likely to have different effects on women and men, and on distinct groups of women. I show how such putative effects of ordeals are relevant to achieving gender justice. I explain why some ordeals may disproportionately set back women's interest in discretionary time, health and access to health care, and may undermine equality of opportunity for positions of advantage. Some ordeals protect the interests of the worse-off women yet set back the interests of better-off women in equal opportunities. I suggest how we can use ordeal design to advance particular aims of gender justice.

Keywords: distributive justice; gender justice; ordeals; health care; women

1. Introduction

This paper is an exploratory normative analysis of the different effects that rationing health care by ordeals (henceforth: 'ordeals') is likely to have on women and men, and on distinct groups of women. The central question is how such putative effects of ordeals are relevant to achieving gender justice. By 'ordeals', I mean methods of rationing health-care resources that operate by making their consumption somewhat – but not extremely – inconvenient for potential users. Examples include 'small hassles, such as visiting a store each month to redeem a voucher' (Olken 2016: 864) or 'application processes, forms, waiting periods' (Eyal *et al.* 2018: 10).

Gender justice, as I understand it here, has two aims: (a) to eliminate unjustified gender norms, and (b) to mitigate, or compensate, the disadvantages generated by unjustified gender norms. 'Norms' here are to be understood very broadly: laws, customs and traditions, as well as individual expectations – such as stereotypes – which can be explicit or not, conscious or unconscious. They can be internalized, to include standards that people endorse, including expectations they have about themselves.

The unifying feature of the two goals of gender justice is the objectionable nature of the norms that feminists oppose, either directly or at the level of their

consequences. Here I rely on the traditional – although now disputed¹ – distinction between sex and gender, according to which sex refers to the biological features such as chromosomes, sex organs or hormones, and gender refers to the social meanings associated with sex, including formal and informal norms. Defined like this, some gender norms are likely justified – for instance, those prescribing different entitlements to health care for individuals on the basis of their different biological features. Other norms, I assume, are unjustified – for instance, norms that set different moral or social evaluative standards for women and for men in virtue of sexist metaphysical and ethical beliefs. In particular, some unjustified gender norms are responsible for women’s specialization in care-giving and men’s specialization in breadwinning. This differentiated specialization is known as ‘the gendered division of labour’ and is the target of much feminist criticism. In the rest of this article I am exclusively concerned with unjustified gender norms that promote a gendered division of labour; for brevity, I henceforth refer to them as ‘gender norms’.

The existence of gender norms means that women’s lives are socially shaped by different expectations than men’s lives; this – as I detail below – is a plausible source of many inequalities of outcome and opportunity between women and men.² Such inequalities are particularly problematic to the extent to which gender norms predispose and incentivize individuals – usually women – to make disadvantageous choices, or otherwise render certain valuable goods more difficult to access for women than for men. In the literature on gender and justice there is a consensus according to which many gender norms lack justification and set back women’s legitimate interests, including interests in access to a range of goods whose distribution is a matter of justice. Examples of such goods include the social basis of self-respect, money and opportunities for positions of advantage (Okin 1989; Fraser 1994; Williams 2000; Robeyns 2007; Gheaus 2012; Schouten 2019).

I do not argue, all-things-considered, either for or against any general claim about gender justice and the use of ordeals. This would be difficult, given the wide variety of ordeals considered here and the scant existing literature on ordeals. Rather, I outline the reasons that are likely to be most salient for the evaluation of ordeals in terms of gender justice; I illustrate my argumentation with examples of potential health policies based on ordeals. An overall finding of this paper is that ordeals can set back different interests, the setting back of which is objectionable at the bar of gender justice. It is also possible that in some cases different reasons of gender justice point to opposite conclusions about the desirability of ordeals. The so-far under-researched topic of ordeals and gender is open to much speculation, since various forms of ordeals tend to intersect differently with women’s and men’s different command of money, time, confidence, know-how, mental health and opportunities for social positions of advantage – most prominently, their opportunities on the labour market.

¹For a critical discussion of the distinction, see Mikkola (2017).

²This is an assumption of the paper and it is certainly contested. For a discussion of the roles of nature and nurture in shaping inequalities between women and men, see Gheaus (2012).

2. The normative background

As in the case of other scarce goods, we need methods to distribute health-care resources. Such distributions can be better or worse, morally speaking,³ a widespread conception about how we ought to distribute health care is prioritarian, attaching more normative weight to benefits that accrue to the worse off recipients. As distributive devices, ordeals have been primarily praised as good tools for reducing wastage and directing resources to the most needy recipients (Altas *et al.* 2013; Olken 2016; Sunstein *Forthcoming*); if the chief virtue of well-designed ordeals is that they result in more efficient, need-tracking distributions, this makes them desirable in terms of either utilitarian or prioritarian goals. I favour the view that prioritarianism is the right principle for distributing goods the distribution of which is a matter of justice. Alongside health care, goods whose inclusion in the distribuendum of justice is relevant to the arguments of this paper are not only the generally acknowledged income, wealth and opportunities to positions of advantage (Rawls 1993), but also discretionary time (Goodin *et al.* 2008; Rose 2016).

Some ordeals are likely to have undesirable distributive consequences both within and outside the area of health care. In particular, I shall explain the possible disproportionate negative impact on some groups of women in terms of their access to health-care resources, on their discretionary time and, in some cases, on their opportunities in the labour market. On the other hand, distributing health-care resources by ordeals rather than according to ability and willingness to pay are likely to benefit the (monetarily) poorest women. Women on average are worse off than men both in money and in discretionary time (Goodin *et al.* 2008). Hence, ordeals can improve on gender justice, at least relative to cost-sharing.

Before I expand on each of these claims in the subsequent sections, let me make some stipulations about what counts as setting back, or advancing, the goals of gender justice, and who the agents are that may, or even have a duty to, advance the goals of gender justice.

As I understand it, and already mentioned above, gender justice encompasses two aims. The first is to undo gender itself – to eliminate gendered norms from children’s socialization and from the workplace, and to dispel the gendered assumptions that shape economic life; a prominent example of such assumptions is that ideal workers have a partner who relieves them from domestic and care responsibilities. The second aim is to rectify those inequalities of outcome between women and men which are due to formal or informal gender norms. I explain these two aims in turn.

One feature that makes gender norms objectionable is their arbitrary influence on people’s development of talents and ambitions (Okin 1989; Gheaus 2012); some feminists go as far as criticizing gender norms for impairing women’s autonomy (Chambers 2004). In addition to stunting individual development, gender norms are responsible for unfair disadvantages. Even in economically advanced liberal democracies, women reach worse outcomes than men with respect to lifetime

³I leave it open whether a desirable distribution of health-care resources is the same as a just distribution of these resources.

power, status, attachment to the labour market, equal pay for equal work, the holding of better jobs and discretionary time. The worse-affected groups of women, at least in terms of economic power, are those who have children (Schouten 2019). Single parents and women who, over the course of their lives, have participated little, or not at all, in the labour market are at particularly high risk of poverty and marginalization, even if they dedicated their time to caring for family and friends (United Nations 2010). Moreover, factors such as statistical discrimination and explicit and implicit sexist biases together undermine equality of opportunity between women and men for social positions of advantage (Gheaus 2012).

Feminists frequently argue that the main culprit for these inequalities is the gendered division of labour (Okin 1989; Gheaus 2012; Schouten 2019). Women's tendency to specialize in providing care for family members, and men's to specialize in paid employment fuel statistical discrimination against women qua workers⁴ as well as less rational forms of bias. Moreover, since markets reward an ideal worker who is supposed to be free from care duties (Fraser 1994; Williams 2000), women who specialize in care-giving at home have few opportunities to also hold decent jobs or to resume attractive careers later in life. Thus, they often become economically dependent on their wage-earning partners. Many families rely on all adults participating – at least to some extent – in the labour market; in such families women's and men's tendency to specialize in either care-giving or paid work is also responsible for the fact that, on average, mothers enjoy significantly less discretionary time than fathers (Rose 2016). This is because women tend to have part-time jobs as well as being responsible for domestic chores and care-giving.

Such women also enjoy, of course, less discretionary time and economic opportunities than women and men who are not care-givers. Given the extent to which the care-giving responsible for women's lesser advantage is directed to children, the gap in advantages enjoyed by care-givers and by non-care-givers is not an obvious injustice. Whether or not it is, depends on the question of whether the costs of rearing children ought to be supported by parents alone, or whether all members of society ought to share them.⁵ This is a debate with which I cannot engage here. Assume that justice requires that the costs of rearing be shouldered by parents alone, at least in cases in which parenthood is voluntarily undertaken. Even in that case, the gap in discretionary time and economic opportunities between mothers and fathers is unjustifiable at the bar of justice, since both mothers and fathers have the same parental duties and it is unfair if fathers free-ride on mothers voluntarily discharging most of these duties. And even if parents alone ought to shoulder the costs of rearing, some women who are not mothers will be disadvantaged by the gendered division of labour: implicit biases against women as workers, or stereotyping women as more fit for domestic roles than men operate against women in general. The

⁴That is, employers' economically rational tendency to prefer male employees over equally qualified female employees who are judged more prone to request time off from work or flexible working arrangements in order to care for children or other people in need of care.

⁵For a discussion of who ought to pay the costs of having and rearing children, see Olsaretti (2018).

gendered division of labour disadvantages women in general, although to different degrees depending on whether they are also parents.

Inequalities in outcomes between women and men are condemned by gender justice to the extent to which they are the result of gender norms. Often, such norms are operational as part of women's (and men's) socialization or as generating unfair constraints on women's participation in the market, as is the case with employers' and co-workers explicit or implicit stereotypes against women. But there are also cases when past gender norms generated unrectified historical injustices responsible for path-dependent institutional developments. Examples of the latter include former legal obstacles to women's education, employment and holding of property, which helped create an economic model that assumes care-givers either stay at home or work part-time,⁶ according to this model, ideal employees have a level of commitment to their jobs that is incompatible with them being part-time care-givers. This model interacts with current gender norms, and the result is that the vast majority of people who sacrifice market participation in order to provide care are women.

Now, it is of course impossible to identify with any precision which differences of outcomes are due to past or present gender norms, and which to behaviour that would also exist in the absence of any gender norm. But, given the pervasive nature of gender norms, some philosophers conclude that it is safe to assume that all significant inequalities of power, status and wealth between women and men are objectionable at the bar of justice (Phillips 2004).

The first aim of gender justice is to eliminate unjustified gender norms. One of the reasons behind this aim is to give women and men the same opportunities for advantageous outcomes, which would involve the elimination of gender norms that curtail women's economic, political and social aspirations, and that encourage heterosexual men, but not heterosexual women, to rely on their partners for the provision of care.⁷ It would also involve the elimination of gender norms that prevent women's fair treatment in the workplace. Indeed, some feminists think that the elimination of obstacles to full equality of opportunity between women and men is the only proper aim of gender justice and that the concern with unequal outcomes is confused (Radcliffe-Richards 2014). But gender norms are pervasive and not easy to eradicate. As long as they are operational, the inequalities in outcomes they generate are also objectionable. The second aim of gender justice is to prevent or mitigate inequalities of outcome generated by gender norms, such as the ones explained above.

It is not always possible to pursue these two different aims of gender justice via the same policies; moreover, some of the policies that seek to mitigate the inequalities of outcome generated by gender norms inadvertently entrench gender norms. This difficulty is reflected in the feminist debate about whether gender justice requires societies to move towards a more gender-neutral division

⁶Nancy Fraser (1994) calls this model the 'universal breadwinner' model.

⁷The fact that gender norms result in different opportunities for women and men is not the only thing that makes them objectionable. A set of gender norms which, overall, gave men and women equally good, but different, opportunities would still be objectionable as a form of undue limitation on the development of individuals' ambitions and talents.

of labour or whether it requires that societies accommodate and support those women who perform the large bulk of care-giving (Robeyns 2007; Gheaus 2012; Schouten 2019). The latter strategy enables women to continue providing most care-giving without facing economic and other penalties. It may be impossible to satisfy both goals at the same time, since supporting care-givers is likely to provide incentives for a sizeable group of women to continue to specialize along traditional gender lines; indeed, sociological research indicates that a significant number of women report a stable preference for combining care-giving with part-time work (Hakim 2000). As long as a critical mass of women specialize in care-giving (and no similar trend exists amongst men), statistical discrimination against women and other biases are likely to endure. For the purpose of this paper I assume that, in cases of practical tensions between these two aims of gender justice, priority should be given to the interests of the worst-off women.

When policies entrench the gendered division of labour without compensating women, for instance by exploiting the ways in which women are made vulnerable by their specialization in care-giving, or by worsening women's time-poverty relative to men's, these features make them *pro tanto* objectionable at the bar of gender justice. Some ordeals may be objectionable for precisely these reasons. But the objectionability of a policy that entrenches gender norms may be mitigated if at the same time it compensates for some inequalities of outcome generated by gender norms, especially if these inequalities affect the worse-off women. As I explain below, time-consuming ordeals are likely to entrench gender norms but also to advance the interests of the worse-off women relative to cost-sharing alternatives.

Further, there is an old and ongoing debate amongst feminists about the agents that can legitimately combat gender norms and the gendered division of labour. Some philosophers who take the gendered division of labour to be the main cause of gender injustice have argued that the family is part of the basic structure of society, and hence comes under the purview of justice and of legitimate state intervention (Okin 1994). Yet, many people endorse traditional, gendered, lifestyles as part of their reasonable conception of the good. Political liberals, who believe that states ought to remain neutral with respect to their citizens' conceptions of the good, take this as a reason against state-mandated, gender-egalitarian interventions (Rawls 1993; Lloyd 1995). More recently, feminists defended gender-egalitarian policies against the charge that they are incompatible with political neutrality by pointing to various desiderata of justice: autonomy (Chambers 2004; Schouten 2019); equal capabilities (Robeyns 2007) or opportunities (Gheaus 2012) between women and men; equal citizenship (Hartley and Watson 2018). Assuming that at least one of these defences is successful, then it is legitimate to use ordeals – as well as other policies – as incentives for individuals to adopt more gender-egalitarian divisions of labour.

3. Effects of ordeals on women's time and access to health care

The most obvious effect that some ordeals might have on gender justice is related to the relative command that women and men have of resources such as mental health, time, education, or self-confidence.

A first concern here is that women tend to display, to a larger extent than men, some features that can prevent them from accessing health-care resources distributed by ordeals. For example, depressed people are likely to find it particularly burdensome to wait in long lines (Eyal *et al.* 2018: 16) or to do additional paperwork, and prone to be disproportionately, and negatively, affected by ordeals that involve queuing or form-filling. Since women are affected by depression almost twice as much as men (Albert 2015), ordeals of this shape will set back women's interest more than men's. Serious depression – let alone depression in general – is a condition that affects a significant number of individuals, and hence the effect is noteworthy.⁸ Note that the setting back of interests can be in terms of deterring women, to a larger extent than men, to access the health-care resources distributed by ordeals of this kind; or, else, it can take the form of making it psychologically more costly for women than for men to access the health-care resources. This is obviously an issue of gender justice to the extent to which women's depression is caused by gender norms that result in women's lesser power and status, or pressures to combine paid employment, housework and care or, indeed, norms that condone violence against them. But even in the absence of such relation, the overburdening of women by ordeals is problematic. Assuming that women, on average, are worse off than men, and assuming that women who suffer from depression are a particularly vulnerable group, ordeals that prevent, or make it disproportionately difficult for, women to access resources, worsen women's situation and hence raise a worry of gender justice.

A similar analysis applies to the time gap between women who are primary caregivers (as well as employees) and other social groups. Time-consuming ordeals have been defended as a good means to offset the disadvantage that poor people have in accessing health resources, because 'whereas money is particularly scarce for the poor, time is not, and so time costs can be used to screen' (Olken 2016: 865). But this is not equally true of women and of men. For women, discretionary time is a scarcer resource than for men whenever they work more hours per week than men – that is, when they do a 'second shift', for instance by combining participation in the labour market and shouldering the lion's share of domestic burdens (Hochschild and Machung 1989). For women, who have less discretionary time, minutes have higher non-monetary marginal value.⁹ Distributing health care by ordeals is typically more time-consuming than using other methods, and therefore ordeals can introduce a relative disadvantage for women with very little discretionary time compared with men (or, indeed, compared with women who are relatively well-off in terms of discretionary time). Moreover, the gendered division of labour means that women are likely to

⁸For instance, according to the National Institute of Mental Health (2019), it affects more than about 6.7% of the US adult population.

⁹Some authors on ordeals assume that '[r]ationing through inconvenience is less regressive than rationing through cost sharing. All people have twenty-four hours in a day, a limited attention span, and a body that can be in only one place at a time' (Eyal *et al.* 2018: 15). But surely what really matters is how much discretionary time people have, and in this respect we are far from equal. Similarly, people's attention spans may vary, which is why ordeals may marginalize users with mental health problems – not limited to depression.

deal with ordeals not only on behalf of themselves, but, when the ordeal design permits it, also on behalf of other family members. This is an additional way in which ordeals in health-care distribution are likely to put a disproportionately large burden on women who are care-givers. Women in general have less discretionary time than men and mothers in mother-led households in particular are the worst-off in terms of discretionary time poverty (Goodin 2011). So, the same argument that recommends ordeals on grounds of class – because ‘money is relatively scarcer than time for the poor’ (Olken 2016: 865) – may dis-recommend them on grounds of sex.

Inequalities in discretionary time are, indeed, likely to generate important complaints of justice, especially if the worse off in this respect fall below a minimum threshold of adequacy with respect to discretionary time. Recently, several political philosophers have argued that having enough discretionary time is a central component of freedom, and/or one of the goods the distribution of which is a direct concern of justice (Goodin *et al.* 2008; Rose 2016). Further, one of the primary concerns of gender justice is with the way in which gender norms, and the gendered distribution of labour, exclude women from full citizenship (Hartley and Watson 2018); obviously, one of the necessary conditions for participating in social and political life is to have enough discretionary time. More generally, sufficient discretionary time is needed for individuals to get the fair value of their basic liberties (Rose 2016): having rights to movement, free association or speech cannot mean much to individuals who lack the time to exercise these rights.

Finally, inasmuch as rationing by ordeals happens in parts of the world where women lag behind men in terms of literacy¹⁰ – that is, usually not in advanced liberal democracies – those who design them ought to also pay attention to this education gap. Ordeals that require literacy, and confidence in one’s literacy, can, in some circumstances, exclude or burden women significantly more than men.

Women for whom ordeals would be particularly burdening due to mental health issues such as depression, or to insufficient education, are also likely to be (in virtue of the same features) amongst the worst-off members of their societies. The same applies to women who are very poor in discretionary time because they are single parents and/or because they need to hold several jobs to make ends meet. (By contrast, women who are time poor because they have demanding careers as well as, possibly, caring responsibilities, are not amongst the worst off, although, compared with their male peers, they are on average unfairly disadvantaged.) This means that negative consequences of ordeals on these groups of women have much normative weight; if, on the balance of reasons, time-consuming ordeals are found desirable, policymakers ought to try and offset the burdens that ordeals are likely to place on women who suffer from depression, illiteracy and time-poverty due to economic hardship. If discretionary time, mental health, and health care are part of the distribuenda of justice, worsening women’s access to these goods generates a complaint of justice.

¹⁰According to a 2011 study, worldwide there is a gap of 10% in literacy between women and men. In some parts of the world illiteracy affects more than a third of the population; and in a few countries – Niger and Afghanistan – three times more men than women can read and write (Graham *et al.* 2011).

In spite of such considerations, in some cases ordeals may be the most desirable mechanism in the allocation of health-care resources (either from the point of view of gender justice, as I explain in the next section, or even all-things-considered). When ordeals are adopted in such circumstances, considerations of gender justice indicate that they should be coupled with ameliorative measures to minimize their negative impact on women's time and (access to) health.¹¹ I illustrate such a possibility in the next section.

4. Ordeals and opportunities in the labour market

Another type of plausible effects of ordeals on gender justice is less direct, because it doesn't necessarily impact on the differences in aggregate *outcomes* between women and men. Instead, this potential effect is particularly relevant for the first aim of gender justice explained above because it concerns the way in which rationing by ordeals can entrench gender norms. On the assumption that women are generally expected to deal with time-consuming ordeals on behalf of some of their family members, the resulting loss of their time will have a negative impact on their opportunities in the labour market, and, more generally, on their opportunities to engage with public matters. This will set back their opportunities to positions of advantage (and hence worsen inequality of opportunities between women and men); but the same effect will also buttress the gendered division of labour, keeping women away from economic and political power.

Here is the explanation of this mechanism. People who take responsibility for meeting the needs of others – their children, sick, elderly or disabled family members, and friends – are, other things equal, less available to their employers, need more time flexibility in their job, and are more likely to use their leave entitlements; thereby, they fall short of the ideal worker. If ordeals contribute to this disparity between women's and men's behaviour on the labour market they also contribute to the reinforcement of statistical discrimination, because they strengthen employers' reasons to expect female employees to require more leave and flexibility than male employees. The effects of ordeals alone is probably minor when compared with the bulk of women's systematic, long-term care responsibilities for children, ill or disabled relatives, or to their general household management responsibilities. Yet, it seems important to register this kind of complaint of gender justice against time-consuming rationing methods.

However, the fact that some ordeals can contribute to setting back equality of opportunity between women and men need not mean that introducing them has, all things considered, undesirable consequences for gender justice. Unlike the women afflicted by depression, or who lack adequate education to manage ordeals, or who are time-poor for reasons of economic hardship, women whose market opportunities are most affected by statistical discrimination are not amongst the worst-off members of their societies. Statistical discrimination is more likely to operate against women who aspire to attractive jobs: jobs that are

¹¹For the suggestion that ordeals be accompanied by ameliorative measures (in a different context) see also Eyal *et al.* (2018: 16).

well paid and display other attractive features, such as work autonomy, security, interesting tasks and good future prospects, usually require high qualifications; they also tend to demand workers' commitment to full-time careers. Other things being equal, economic rationality speaks against hiring for these positions workers who need flexible working times. It is also for these kinds of jobs that employers want to avoid high levels of staff turnover – for instance, due to parental leave – since finding adequate replacements and training new employees is costly. In contrast, the jobs where a high level of staff turnover is not particularly problematic for employers – because it is easy to recruit replacements, and cheap to train new workers – come with significantly lesser benefits. Therefore, ordeals that worsen women's time-poverty will mostly fuel statistical discrimination against women who aspire to the better jobs – that is, women who are amongst the best-educated and skilled members of their societies, and hence not amongst the worse-off.

Assume that the alternative to rationing health-care resources by ordeals is to ration them by cost-sharing, and that in some cases rationing by ordeals is, on the whole, better for poor women than rationing by cost-sharing. This can be the case whenever women's interest in more disposable time (set back by ordeals) is outweighed by women's interest in more cash (set back by cost-sharing.) In such cases, policymakers face a trade-off: they can opt for ordeals and impose burdens on the better-off women by feeding the reasons for statistical discrimination against them, and thus also entrenching gender norms. Or they can opt for cost-sharing and impose disproportionate financial burdens on the worse-off women. Ordeals are one case of policy in which advancing one goal of gender justice – the undermining of gender norms – is likely to set back the other – compensating women for their (in this case, material) disadvantage.¹²

To illustrate, take a stylized example: Jane and Joe are a working class couple, Mady and Max are a middle class one. In their respective households, it is Jane and Mady who deal with ordeals – they would wait in lines for themselves and maybe family members, fill in the extra forms and so on. This means that Jane and Mady would pay the costs of ordeals in terms of time and effort. Rationing through inconvenience would set back Mady's interest in time. It would increase the demand for care leave and flexibility time from her, and those like her. As a result, her opportunities relative to men's for attractive jobs would be further set back – perhaps just a tiny step – by rationing via ordeals. Since Mady aims to have a career, and has a real shot at an attractive job, time is a high price for her to pay because it translates in loss of high-stakes opportunities. Ordeals would also burden Jane – who is also more time-poor than John – by reducing her discretionary time; but they would be less likely to affect her opportunities on the market, since she is more likely to have a precarious job, not a career. Jane will probably also need leave from her job, but, unlike Mady, she will not miss important meetings on which her career depends, and if the leave is longer

¹²Looking beyond gender justice, if ordeals are better than cost-sharing for the poorest members of society, then egalitarians, prioritarians, and maybe even sufficientarians have reason to prefer ordeals over cost-sharing. The balance of the reasons outlined here may incline decisively in favour of ordeals. There may, of course, be other reasons that weight against ordeals and they may prove decisive.

her employer will find it easier to replace her than Mady's employer will. Jane's employment conditions are, in any case, likely to be more precarious than Mady's. Since Jane has little money, she may be actually better off with less time (the price of ordeals) than with the money she would have to pay if necessary health-care resources were distributed by cost-sharing. By contrast, cost-sharing would require no time sacrifices from Mady, and hence it would not negatively impact her career. Cost-sharing would thus be better for Mady's opportunities in the labour market, but it would obviously set back Jane's (and Joe's) financial interests more than Mady's (and Max's), who are better off economically and therefore are less burdened by cost-sharing.

One way out of this dilemma¹³ would be to distribute health-care resources by cost-sharing that is adequately progressive, such that the financial burden imposed on people like Jane (and Joe) is less significant than the time cost imposed on them by an ordeal on both women but mostly on Mady. But if, for whatever reason, the dilemma cannot be dissolved,¹⁴ and if policymakers opt for ordeals in order to prioritize the interests of the worse-off women (and men), it is important to be aware of the higher costs it imposes on women and on the different costs to be paid by the different groups of women.

Women such as Jane are likely to be negatively affected by time-consuming ordeals because their discretionary time will be further diminished. If they opt for ordeals, policymakers can mitigate this effect either by providing incentives for men like Joe to share the time-burden of ordeals – and thus, by undermining gender norms – or, more feasibly in the medium term, by making it possible for women like Jane to spend less time in paid work. Such solutions, like housewife wages, have long been advocated by feminists (Okin 1989) as a general way of compensating women's care work.

Ordeals will affect women like Mady not only by making them more time poor but also in terms of their opportunities in the job market, and they will aggravate the inequalities of such opportunities between women and men. Even if this cost cannot be eliminated through the design of particular ordeals, it may be possible to mitigate it by introducing *other* policies that combat statistical discrimination and, more generally, biases against women in the workplace.¹⁵ Even more importantly, policymakers can provide incentives to people like Max to share informal caregiving more equally (Schouten 2019).

¹³Another way out would be to adopt progressive ordeals, for instance by requiring men to wait longer than women. Different waiting times are familiar from other contexts – for instance, people with (small) children have boarding priority. It is not clear that appeal to gender justice could make such ordeals legitimate. I am grateful to an anonymous referee for suggesting this possibility.

¹⁴Because, for instance, adequately progressive cost-sharing in particular cases is undesirable for some reason, or because while it is desirable it is not possible to implement (without undesirable consequences).

¹⁵There is a similarity between this situation and the feminist debate concerning the introduction of a universal basic income. Basic income has been criticized for its potential to increase statistical discrimination (by sponsoring women's partial retreat from the labour market); but, given the grounds in favour of basic income, including the ways in which it would benefit the worse-off women, some have argued that an ideal solution would include the basic income alongside other policies, which advance equality of opportunities between women and men (Gheaus 2008).

5. Designing ordeals to advance gender justice?

The use of ordeals in rationing healthcare could perhaps be turned into an asset for gender justice. For instance, ordeals can be designed to include defaults meant to improve a more equal participation of women and men in child-rearing by nudging men to get more closely involved in the provision of healthcare for their children – starting before birth.

As already noted, many feminists think that gender justice requires moving towards a more gendered-neutral division of labour. De-gendering the division of labour may be instrumentally necessary to achieve gender justice, as the best or the only way to undermine gender norms, including those that prevent equality of opportunities between women and men (Robeyns 2007; Schouten 2019). On an alternative view, a gender-neutral division of labour is the regulative ideal of gender justice as a necessary (although not also sufficient) condition for giving both women and men opportunities to combine care-giving with secure participation in the labour market (Fraser 1994; Gheaus 2012). In both cases, in order to de-gender the division of labour it is important to get men more involved in care-giving.¹⁶ One efficient way to involve men in care-giving is to encourage them to step into their parental role from the beginning of the child's life (Brighouse and Olin-Wright 2008) – or perhaps even before birth. Indeed, for this reason feminists proposed ways of reshaping, for instance, parental leave, to incentivize fathers to spend as much time with their newborns or adopted children as mothers (Brighouse and Olin-Wright 2008; Gheaus and Robeyns 2011). If, as a default, both expecting parents were required to participate in the delivery of health care for pregnant women during pregnancy, this might result in better male participation in parenting. Requiring, as a default, custodial fathers to participate in some of the delivery of health care to their children may advance the same goal. At a minimum, health-care providers could require expecting fathers who do not wish to participate in the delivery of pregnancy care to fill out forms explaining the reasons for their unwillingness to participate. Usually, acknowledgement of paternity happens at birth; however, some countries allow men to acknowledge paternity before birth, for instance, when the expecting couple is not married, and in order to make sure paternity was acknowledged in case the expectant father dies before the birth of the child. This practice could be extended to all heterosexual couples when the pregnancy is established, and be the occasion of additional form-filling for fathers who decline to be part of the pregnancy health care. A similar default could apply in order to encourage fathers to take charge of some of the delivery of health care to their children. Policymakers could go a step further and use nudges such as shorter waiting times if fathers, rather than mothers, take their children to the doctor.

¹⁶Women have already joined the workforce massively. One way of de-gendering the division of labour is by commodifying all care-giving, and some advocate this measure as instrumental to realizing gender justice (Bergmann 1998). But it is doubtful that the full commodification of care-giving can be desirable as far as the wellbeing of children is concerned; moreover, a world where most childrearing would happen in institutional settings seems to also involve a significant loss of objective value for adults (Brighouse and Swift 2014).

The design of any ordeals that include nudges towards a more equal involvement of fathers in child-rearing would need to be especially careful about any unintended consequences. In particular, policymakers ought to make sure that the design of defaults does not set back children's interests (by alienating instead of involving fathers), does not backfire on expecting mothers who don't have partners (by stigmatizing them) and does not overburden expecting mothers who have partners unwilling or unable to participate. An artfully designed ordeal would encourage men's participation in the care of their pregnant partners and children without setting back either women's or children's access to medical resources.

In particular, it has been argued that using defaults which assume that both parents are going to perform the same amount of child-care is a good compromise between nudging individuals towards more gender-just arrangements and preserving their freedom to decide (with some inconvenience) to follow less symmetrical patterns of care-giving. Policymakers can do a similar thing in the case of ordeals rationing pregnancy care and care for children.

6. Conclusions

In the case of some ordeals, there is no reason to expect them to have any bearing on gender justice. For instance, it is hard to see how requiring physicians 'to navigate to the bottom of a computerized list to find the option that would allow her to refuse generic substitution' (Eyal *et al.* 2018: 11) would have any differential effect on opportunities, or outcomes, affecting women and men. Other ordeals, however, do have effects on gender matters. Ordeals have been praised as attractive ways to distribute health-care resources because they can best select users who value these resources. But various users can fail to subject themselves to ordeals for different reasons. One is because they do not truly need the resources, in which case ordeals reach their goal of avoiding wastage. Other reasons why some users will fail to go through ordeals is because their cognitive functions, and hence rationality, is impaired – for instance, by major depression – or because they are very poor in time, or because they lack enough (confidence in their) know-how. These cases make ordeals problematic, since depression, time-poverty and insufficient education often affect the (other things equal) most vulnerable people. Moreover, to the extent to which these characteristics are gendered, the objections against ordeals that negatively affect the groups of people in question are objections of gender justice.

By putting additional time demands on women, I argued, ordeals can also have a negative impact on women's opportunities on the labour market. Here the main danger is that ordeals contribute to statistical discrimination against women, hence setting back even further their opportunities and fuelling gender norms.

The setting back of women's interest in disposable time, (access to) health care and equal opportunities, and the further entrenching of gender norms are defeasible, but important *pro tanto* reasons against ordeals. However, in many cases there may be powerful normative reasons in favour of ordeals. In such cases, policymakers should seek additional policy tools to offset the objectionable impact on women's resources and opportunities.

Moreover, some ordeals may be useful in the promotion of gender justice, in particular by encouraging men to become more involved in child-rearing. Assuming it is legitimate for states to nudge individuals towards gender-neutral divisions of labour, policymakers should consider the use of ordeals as a tool to advance gender justice.

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