

LIBERAL CRITICS OF RAWLS

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According to Nancy L. Rosenblum, Rawls's work, *A Theory of Justice*, should be interpreted as a liberal political answer to the classic utilitarianism and to challenges from critics of liberalism on the political left. It seems, though that Rawls does not react strongly enough to the accusations that declare liberal politics as a power blasting the moral values. It is hard to establish a relation between liberal politics and moral life, therefore the target of political discussions was to examine this question during the 80's. The main points of liberalism are personal freedom, the citizen's rights and protecting the personal sphere. Its power derives from respecting human rights and the ethnic and religious pluralism, as opposed to Marxism for instance. Besides this, according to Rosenblum, the development of the welfare countries confirms its power compared to the countries based on marxist ideology. The core idea of liberal politics is the theory of limited government, providing institutional guarantees for personal liberty.

In my thesis I would like to present criticism on Rawls by two liberal authors whose intention was to reform classic liberalism. Susan Okin considers Rawls' theory on women to be unjust, so she proposes the separation of the private and the common sphere on new grounds. Benjamin Barber also suggests that the two areas approach each other as liberalism and democracy are able to cooperate, that is, complementing each other. He too argues against the full realization of the principle of classical liberalism, but he also searches for the roots, finding it in the rawlsian contract-theory. Firstly I would like to introduce Rawls' theory briefly. „What I have attempted to do is to generalize and carry to a higher order of abstraction the traditional theory of the social contract as represented by Locke, Rousseau and Kant. A contract view holds that certain principles would be accepted in a well-defined initial situation. I shall consider only principles of justice and others closely related to them; I make no attempt to discuss the virtues in a systematic way” – says Rawls. That is why it is not easy to make out his moral views. He of course lists some liberal assets such as freedom, opportunity and self-esteem, what is more, he often considers the latter as of the highest value.

The persons in the initial situation would choose two rather different principles: the first requires equality in the assignment of basic rights and duties, while the second holds that social and economic inequalities, for example inequalities of wealth and authority, are just only if they result in compensating benefits for everyone. To presume this we need the idea/thought of the original position. It is assumed, then, that the parties do not know certain kinds of particular facts. First of all, no one knows his place in society, his class position or social status; nor does he know his intelligence and strength, and the like. Nor, again, does anyone know his conception of what is good, or the particulars of his rational plan of life. More than this, the parties do not know the particular circumstances of their own society. The persons in the original position have no information as to which generation they belong to.

It may be protested that the condition of the veil of ignorance is irrational. Here Rawls sketches those replies which emphasize the simplifications that need to be made if one is to have any theory at all. We can view the choice in the original position from the standpoint of one person selected at random. If anyone after due reflection prefers a conception of justice to another, then they all do, and a unanimous agreement can be reached. The parties have no basis for bargaining in the usual sense. No one is in a position to tailor principles to his advantage – the same holds for the formation of coalitions. Rawls supposes that upon these conditions social justice can be guaranteed. Behind the veil of ignorance the participants are unbiased in choosing the principles that will guide their behaviour. But will this society be just in every respect?

Susan Moller Okin doubts the justice of a system based on the rawlsian theory. She begins her argument by stating that although feminist political philosophy is relatively appreciated nowadays, liberal politics nevertheless still use the social establishment of gender-based differences. This challenge can only be responded to by a humanistic approach to liberalism. In politics it is a basic standpoint that only men are allowed to cross over from the private realm to the public, whereas women are bound to the family, where they are subordinate to men. Liberalism has been constructed around distinctions between the public realm, which includes politics, and the private, which includes personal and domestic life. The „autonomous individuals” of whom liberal theorists wrote before the twentieth century – with the notable exception of John Stuart Mill – were male heads of households. The past of liberalism is deeply and, for the most

part unambiguously, patriarchal. When can a humanistic approach be substituted for this patriarchal version? These aims of liberalism are much more likely to be achieved in a society considerably more egalitarian than the oligarchical-democratic hybrid that the United States is today. A liberalism that is founded on the plurality of beliefs, modes of life, and attachments, and that aims to maximize the persons' opportunities to live a good life as they wish is not only *compatible* with a significant degree of socialization of the means of production and redistribution of wealth – indeed it *requires* it. Humanistic liberalism is by all means more egalitarian than the present one; however, feminist challenge is parallel to left-wing challenge. The woman issue is a political issue. (Contemporary liberal theory has yet to take account of the fact that men are not mushrooms. It pays remarkably little attention to how we *become* the adults who form the subject matter of political theories.) In today's liberal notion, the need for free, rational individuals presumes women's unpaid housework and banning them from most of the public realm. Childraising fully falls to their lot. The main problem is that liberals voice the neutrality of the state in questions concerning private life, referring to non-intervention. Feminists have challenged the liberal distinction between the public realm and the private life of the family. For hundreds of years in Britain and the United States, the Common Law notion of coverture deprived women of legal personhood upon marriage and divorce was prohibited for them. Traditions and practice of the past are still alive, the history of inequality between the sexes is of continued significance. The current divorce laws and practices of American courts place women and children at a considerable social and economic disadvantage, and this fact affects the conditions of ongoing family life, reinforcing male dominance. On the other hand, women are still not paid for housework. Family roles affect the public realm, which in turn affects the private realm. For instance, the few highly-paid female lawyers lose their opportunities for professional advancement as soon as they become mothers; nevertheless, housework remains a chore as a matter of course. Abortion laws are not made by single parents, female or male – outsiders make decisions concerning the most vulnerable members of society. In this question, liberalists again use the notion of the separation of private and public realms as a justification. While the core of democracy would be a chance for everyone to make themselves heard, women are still barred from politics. Those among women behaving in a „macho” way are most likely to voice their opinions.

Early liberal authors also refer to men's rule in the family. Locke says that the state should not intervene in a father's decision on marrying off his daughter. The daughter's rights are not mentioned – personal rights are more important than family private rights. John Rawls's *A Theory of Justice*, published before much of the new scholarship on gender had appeared, continues the ambiguities and omissions of modern liberalism about both gender and the distinction between public and domestic life. Rawls's theory as a whole does not depart from the liberal tradition's failure to perceive the family as a political institution, to which principles of justice should apply. The family is to a large extent ignored, though assumed, in the rest of the theory. It is addressed specifically only in three contexts: as a barrier to equal opportunity; as the mechanism to resolve issues of justice between generations; and as the initial setting in which individuals begin to develop a sense of justice. He assumes domestic or family life, but pays no attention to its prevalent gendered division of labor, nor to distributions of power, responsibilities, privileges. This stance is typical: the contemporary theorists persist in their refusal to discuss the family, much less to recognize it as a political institution of primary importance. The participant of the original situation is the head of the family, therefore Rawls does not deal with the problem of justice within the family. There is no mention of the division of labor, only women's political, economic and life opportunities.

Ackerman, Dworkin, Galston and Nozick deal with the question to an even lesser extent. Communitarians idealize the traditional family. In *After Virtue*, McIntyre returns to Aristotle's comprehension of virtue, which does not take women into consideration. McIntyre's two examples for the female character are the evil stepmother and the breast-feeding wolf. In Plato's *State*, where McIntyre sees an example of women's emancipation, women can be guards after the abolishment of the family as an institution. Rawls does not mention either that human beings are formed not only by their principles, devotions and notions of good, but also by their gender-structured family and society. Sandel, however, does not see justice as the main virtue of social institutions. In the family, which is one of the major groupings of society, justice is not dominant. This is usually true for intimate communities, says Sandel, quoting Hume who lived two hundred years ago. However, there is no object in life that can be exempted from revision. A person is able to abstract from their convictions in order to form the principles of justice, however determinant those convictions may be in their life. In defence of Rawls and adapting from Locke, Bayle and Hume,

Lartmore refers to *modus vivendi* liberalism which claims the neutrality of the state. Such separation of public and private realms, however, does not apply to reality. Although not deliberately stated, Rawls takes family, church, universities and clubs out of the scope of justice. On the contrary, humanistic liberalism says that both public and private spheres should be focused upon. The family is a basic political institution, in which there must be justice.

Benjamin R. Barber usually criticizes contract theories; his writings are based on analyzing the relationship between democracy and liberalism. In its erratic, often glorious, political history since 1688, liberalism has forged many alliances: with rationalism and with empiricism, with revolution and with bureaucracy, with enlightenment and with romanticism, and with *lassiez-faire* economics and with nationalism. But no alliance has served it better than the one it established with democracy. Still, the tyranny of „legitimate” majorities founded on popular sovereignty could be more onerous than traditional ones. Several liberal authors considered democracy as a danger to the safety of the individual. Even friends of democracy such as William Connolly worry that democracy „contains danger” and that it is a danger that „resides within the ideal itself”. Thus it can be said that anarchy – the absence of all government – was the purest expression of liberalism (in this pure sense Hobbes is no liberal at all). From the start, liberalism forged a working relationship with democracy, which seemed to share so many of its goals – welfare and freedom. By today, Western liberal states have in fact all become liberal democracies, combining principles of individual liberty with principles of collective self-government and egalitarianism. The individual and their freedom, however, has priority over the community and its rights.

The priority of the „liberal” in liberal democracy has rendered it vulnerable to modernity’s most devastating political pathology: deracination. The impact of the Enlightenment on religion and the impact of epistemological skepticism and post-Enlightenment science on nature and natural law have left modern women and men to live in an era after virtue, after God, after nature, an era offering neither comfort nor certainty – „all that is solid melts into air,” said Marx. On the other hand, individualism could not be defended against community in the 20th century. Indeed, it is arguable that the forces that created the greatest pressures on the liberty of individuals in the twentieth century are, at least in part, the consequences of

deracination, social anarchy, and rampant individualism – the consequence of too much liberalism.

Some say that today's liberal democracies are rooted in the theory of consent, which is an incorrect approach. The doctrine of consent was originally intended to give obedience a justification rooted in the interests of individuals rather than in the authority of states. Liberal theories of consent refer to popular will; basically this was the connection with the theory of democracy. In contrast to this, in Nozick's individualistic liberalism the individual stands as the sole measure of right, but the liberal democracies' claim is not only the individuals' priority over the community, but also forging the individuals into communities. Classic consent/contract theories are wrong in saying that communities are not made up by individuals and individuals are not formed by communities; although Locke's or Rawls's social consents could have been the bases for mediation between collectivists and libertarians. Individuals subject themselves to social consent, but this consent is voluntary. The problem is elsewhere. Three primary forms of consent can be discerned: we may understand them as original consent, periodic consent, and perpetual consent. Anti-liberal regims can easily abuse the theory of Rawls-type original consent (one thinks of Hobbes and Hamilton, who also refer to people's consent to the present situation). Liberalism in its purest form, however, is represented by the theory of permanent consent. It requires consent to each and every collective act – each law, contract, bargain, encroachment, and so on. All the versions of consent theory merge in the practice of Western governments – as when the Supreme Court intervenes in the name of original consent (the integrity of the Constitution – representing the original voice of the people –, the overrule elected officials operating in the name of periodic consent ...). These mixed liberal democratic regimes share certain fundamental weaknesses that take us to the heart of the problem – with consent as the liberal linchpin. The will of the community cannot exist in it, individuals always take over communities. Politics become wholly defensive and negative, the only principle being not to disturb the individual.

Surprisingly enough, priority of the individual was already voiced when it could not yet be sensed in hierachy-based societies. With the theories of social consent, fiction created reality. The „natural” man was merely a hypothetical contrivance, on the basis of which historic communities could be offended. However, this separated individual can

easily be encouraged by aggressive imperialism to constant fight or competition with the others. Only democracy can compensate one's anti-politism? The public sphere is a necessary evil in liberalism where social consent is only made according to private interests. Madison, for example, intended that democracy should take on a role of dividing powers. The theory of social consent was an attempt to surmount the liberty of liberalism and the demos-interest of democracy, but no balance was made, only a dogmatic justification of the priority of liberty (see Rawls). Liberty was justified as a lack of all communal compulsions. In Rawls's theory, individual freedom over communal needs also means the priority of right over utility. In contrast, Barber argues for a „strong democracy”. It offers a framework for institutions that safeguards the liberty of individuals without alienating them from public space. The point takes participating seriously – the individual gains their identity and rights from the community.

The basis of social consent is that we all obey the state that protects us from the others („Let's make a state we all obey, in return for which it will protect us from each other” – Hobbes) and from ourselves (Locke). The act of participating emphasizes something else: all of us are born into a community, being a subject of public will. We learn to live with the conflicts, and to cooperate with the community by both standpoints. The model of participation is, however, basically different in its conception of personality from the consent-theories, because it contains entchange for the community as well as for the participating member. The bachelor who becomes a spouse is not a bachelor who has made a bargain, but someone who has given up his bachelor identity and moves on to a relationship. The moves from parent to neighbor, from neighbor to townsperson, from townsperson to citizen of the United States, all have the same potential of self-transformation, when the link to the community is participatory and not merely consensual. One of the social characteristics of a participant is development. In contrast to this, the conception of social consent is based on permanence of interests. Participation entails constant activity, ceaseless willing, and endless interaction with other participants in quest of common grounds for common living. Single consent offends the idea of participation, occasional consent only makes elected politicians real citizens. Public interests become their personal interests – the state ceases to be *res publica*. The language of consent is *me* language: „I agree” or „I disagree”. The language of participation is *we* language: „Can we?” or „Is that good for us?”. Libertarians do not understand how one can give permanent consent to

something. Constant debate can result in anarchy, whereas the main aim is harmony. Harmony of course should not be mistaken for uniformism which libertarians are afraid of in democracy. Democracy should always be open to debate and pluralism; the possibility of harmony is a byproduct of participatory politics. Where there are policies, policemen, and power, there lurk potential enemies of liberty – the price we pay for this vigilance is also to see enemies where there are only neighbors, antagonism where there may be cooperation. Abandoned by God and Nature we must depend on each other.