

TWO NOTIONS OF LIBERTY

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Abstract

For Rawls, liberty, mainly, is connected with constitutional and legal restrictions, and for basic liberties, he includes some sort of things which are sufficient for his theory. At the end, he defines the priority of liberty, without liberty his two principles of justice lack the doctrine of equality. Rawls talks about the limitations of liberty and seeks the well being of an individual and society. The other notion of liberty is given by Carole Pateman in her book 'The Sexual Contract.' She says that marriage contract is only made for women that is compelled them to live as a slave and subjected to men for sexual access, made them give up their all liberty and freedom to the men. She, in the end, announces that feminists need a good idea to reformulating the theories of liberalism and socialism of political thinkers and philosophers from feminist perspective.

Keyword: Equality, Feminist, Liberty, Pateman, Rawls, Women

1. INTRODUCTION

Equal liberty is one of the fundamental rights, for all human beings, that every rational human being has equal liberty to do anything without harming others' liberty. In this paper, I will examine two notions of equal liberty from the perspective of John Rawls' book 'A Theory of Justice' and Carole Pateman's 'The Sexual Contract.'

The main idea of Rawls' 'A Theory of Justice' depends on the two basic principles of Justice; his first principle which is based on equal liberty is more prior than his second principle. First principle explains that each person is to have an equal right to the most extensive

total system to equal basic liberties compatible with a similar system for all.¹ For him liberty, mainly, is connected with constitutional and legal restrictions, and for basic liberties, he includes some sort of things which are sufficient for his theory. At the end, he defines the priority of liberty, without liberty his two principles of justice lack the doctrine of equality. Rawls talks about the limitations of liberty and seeks the well being of an individual and society.

The other notion of liberty is given by Carole Pateman in her book 'The Sexual Contract.' Her basic ideas revolve around the system of patriarchy and fraternity in the social contract and civil society. Pateman claims, liberty and equality of women is based on the idea of 'women's obligations as citizens', like women's private obligations, were of obedience only-moreover, of obedience within the private sphere, to husbands and father.² She says that marriage contract is only made for women that is compelled them to live as a slave and subjected to men for sexual access, made them give up their all liberty and freedom to the men. She, in the end, announces that feminists need a good idea to reformulating the theories of liberalism and socialism of political thinkers and philosophers from feminist perspective.

I will argue, in this paper, in the favor of Carole Pateman in the context of equal liberty and would like to discuss the issues that prevail in the system of patriarchy and fraternity.

2. RAWLS CONCEPT OF LIBERTY

Before explaining the concept of liberty, Rawls clarifies the four stages sequencing which show how the principles of institutions are to be applied. In the first stage, parties, in the original position, have chosen the principle of justice, and then they move to a constitutional convention. There in accordance with the

¹ H. L. A. Hart, "Rawls on Liberty and Its Priority." *The University of Chicago Law Review* 40 (1973): 534-555.

² Carole Pateman and et al., "Political Obligation, Freedom and Feminism." *The American Political Science Review* 86 (1992): 179-188.

chosen principles, they choose a constitution and establish the basic rights or liberties of citizens. The third stage is that of legislation where the justice of law and policies are considered; enacted statutes, if there are to be just, must satisfy both the limits laid down in the constitution and the originally chosen principle of justice, the fourth and last stage is that of the application of rules by judges and other officials to the particular cases.³

The main feature of Rawls' theory of justice depend on the two basic principles of justice, first principle is based on equal liberty and second based on difference principle. I am intended to focus on first principle that talks about basic and equal liberty. The first principle of justice formulated by Rawls says that each person is to have an equal right to the most extensive total system, to equal basic liberties compatible with a similar system for all.

The principles are to be ranked in lexical order and therefore liberty can be restricted only for the sake of liberty. There are two cases: (a) less extensive liberty must strengthen the total system of liberty shared by all and (b) a less than equal liberty must be acceptable to those citizens with the lesser liberty.⁴

In his first principle, Rawls initially wants to clear that all the citizens are equal in society with similar system for all. Each man is rational human being and have equal rights and liberty and from this every human being can get advantage as Rawls clearly explains "all social values such as liberty and opportunity, income and wealth, and the bases of self respect are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone's advantage."⁵ Women get disadvantages in the social values as definition of liberty and rights was laid down from paternalism point of views and women were nowhere to be seen to have an access of such privilege in the form of distributive justice.

Rawls first principle of justice is more prior than second principle of justice as liberty is a basic right for all human beings and he terms liberty by taking references from these three articles:

- 1) The agents who are free
- 2) The restrictions or limitations which they are free from
- 3) What it is that they are free to do or not to do?

For the most part, he discusses liberty in connection with constitutional and legal restrictions and in these cases; liberty is a certain structure of institution, a certain system of public rules defining rights and duties.⁶ Here, Rawls basically clears the concept of liberty from his own point of view, after giving definition of liberty he establishes distinction between liberty and the worth of liberty, he says further that liberty is represented by the complete system of the liberties of equal citizenship, while the worth of liberty, to person and group, is proportional to their capacity to advance their ends within the framework the system defines.

Freedom as equal liberty is the same for all, the question of compensating for a lesser than equal liberty does not arise. But the worth of liberty is not the same for everyone. Taking the two principles together, the basic structure is to be arranged to maximize the worth to the least advantaged of the complete scheme of equal liberty shared by all. This defines the end of social justice.⁷

By formulating his first principle, Rawls also talks about basic liberty and claims to have an access of equal liberty by all in compatible with similar system for all. However, he does not provide much guidance on basic liberty, he simply explains "the basic liberties are, roughly speaking, political liberty (the right to vote and to eligible for public office) together with freedom of speech, and assembly; liberty of conscience and freedom of thought; freedom of the person along with the right to hold (personal) property; and freedom from arbitrary arrest and seizure as defined by the concept of the rule of law."⁸

Most of the things Rawls include in the concept of basic liberty but from the feminist perspective he fails to do

³ Hart, H. L. A. *Rawls on Liberty and Its Priority*, 536.

⁴ John Rawls, *A Theory of Justice* (Cambridge, MA: Harvard University Press, 1971), 250.

⁵ *Ibid.*, 62.

⁶ *Ibid.*, 202.

⁷ *Ibid.*, 204.

⁸ Robert F. Ladenson, "Rawls' Principle of Equal Liberty." *Philosophical Studies: An International Journal for Philosophy in the Analytic Tradition* 28 (1975): 49-54.

so in the same manner. The principles designed of distributive justice might be sufficient from the perspective of Rawls but they are not from the feminist perspective. There are modules relevant to the basic liberties of women that must have been added in the basic liberty.

Robert F. Ladenson defines basic liberty as a liberty of citizens from governmental restrictions to do certain kind of things, the possession of which would be regarded as so important by a person in the original position that he would not consent to any governmental arrangements that gave someone the authority to deprive him of it routinely.⁹ According to Robert, some, some limitations and restrictions on basic liberty by government is necessary for the sake of liberty. Thus, according to him limitations upon a given basic liberties not only must be necessary to prevent serious harm but also must be of such a nature that the grounds upon which all rational people in the original position would regard limitations upon the liberty in question to be generally undesirable do not apply. For example, restrictions upon freedom of expression in the name of security are, at time justifiable because there are circumstances in this connection, capable of reasonable specification.¹⁰

H. L.A Hart also says that the restrictions on the basic liberty of speech and private property are commonly accepted as tradeoffs, not of liberty for liberty, but liberty for protection from harm or loss of amenities or other elements of real utility.¹¹ Limitations and restrictions on basic liberties affect women and make them indignant, by doing so; they are not trying to limit the basic liberties but to limit the freedom of women in the so called democratic society.

In the final, Rawls defines the priority of liberty by which he means the precedence of the principle of equal liberty over the second principle of justice. The two principles are in lexical order and therefore the claims of liberty are to be satisfied first. Until this is achieved, no other principle comes into play. The priorities of the

right over the good, or of fair opportunity over the difference principle, are not presently our concern.¹²

For Rawls, without liberty, his two principles of justice cannot work in the society and if it is so, then concept of liberty must be distributed equally among the different genders of society and no particular community must access such benefits of freedom. As the facts elaborate, women have less authority and wealth as compare to men and therefore they are unable to access their aim at the stage of liberty. The men are powerful and they access economic benefits, property rights and a more liberal lives than that of women have. So, Rawls' principle of liberty is supposed to be tribute to the men as it has been written from the male perspective and he seems to be as rational for the male community only.

3.CAROLE PATEMAN'S NOTION OF LIBERTY

The only discussion about liberty and equality find its ground in the social contract and civil society. But according to Carole Pateman the revolutionary values are liberty, equality and fraternity. Modern patriarchy is fraternal in the form and the original contract is a fraternal part.¹³ According to some feminists, fraternity means the brother hood of men. The modern world is presented as a fraternal not as a patriarchal. Fraternity is seen as a free union and its proponents insist that fraternity implies the existence of communal bonds that are civil or public, not confined to assignable person, and that are freely chosen. Such an interpretation of fraternity has become so widely accepted that, although feminists have long appreciated that community or socialist solidarity has usually meant that women are merely auxiliaries to the comrades, they have also spoken the language of fraternity.¹⁴

Introducing fraternity in civil society, it shows the same thing about liberty and equality as patriarchal do, the position of women in civil society does not clear their liberty and it is still limited in civil society. On the contrary, not only does Hobbes' portrayal of the natural condition include the striking presupposition that natural freedom and equality are the birth right of

⁹ Ibid., 51.

¹⁰ Ibid., 53.

¹¹ Hart, H. L. A., *Rawls on Liberty and Its Priority*, 548.

¹² Rawls, *A Theory of Justice*, 244.

¹³ Carole Pateman, *The Sexual Contract* (Cambridge, UK: Polity Press With Blackwell Publishers, 1988), 77.

¹⁴ Ibid., 78.

women as well as men – in the state of nature women are lords – but in the other contract theorists have to admit women's freedom at the same time that they deny it.¹⁵ As Filmer mentions the reductio ad absurdum of contract argument was the corollary that women specially virgins by birth have as much natural freedom as any other and therefore ought not to lose their liberty without their own consent but fortunately there were no questions of social contract because individuals were not born free and equal, naturally knowing no government sons were born. Subject to their fathers, infants could not and did not consent to their father's authority. A son was subjected also to the paternal right of the monarch.¹⁶

It is clear that equal liberty of political power is shifted from father to son and to brother, not to mother or sister because of patriarchy and fraternity system. Women lack their equal liberty and are subjected either to a man or to the judgments of men and find unable to put them above these judgments existing in the society. Unfortunately, the head of the families is always a man, taking all decisions on the behalf of their own motive which decreasing the participation of women in political level, according to them, women are accessible just for satisfying their sexual desire.

Pateman's claims that Rawls refers the word man and individual in his book but does not make space for the women in it, he does not even include women in his description of the family and it makes women not supposed to be as citizens. Rawls discusses his theory most probably in the context of masculinity not with feminist perception. It is natural for him to think from men's perspective and to ignore women even in the description of the family because he is also one of them who have always seen a man heading the family.

Pateman thinks, in the state of nature, social order in the family can be maintained only if the husband is master. Unlimited feminine desire must always be contained by patriarchal right. Women relation to the social world must always be mediated through men's reason, women's bodies must always to subject to men's reason and judgments in order are not to be threatened.¹⁷ At the stage of patriarchy, Pateman clears that the equal

liberty of women is always limited by men's reason, even after living in a democratic country, women freedom and equal liberty is restricted by the freedom of men in the social world, they have always been as subject to men's reason and judgments.

Most of the political philosophers are concerned about equality, liberty and political values in their theories, but none of the philosophers explicitly shows the position of women in the society and does not give enough attention on the women's limitations of equal liberty and freedom as feminity and masculinity, in the state of nature are constructed theoretically to reflect women's deficiency so that the Rawlsian desired solution can be obtained in civil society. Women are excluded from the status of free and equal individual because they lack the capacities to undergo that remarkable change that Rousseau tells us, occur in men when civil society and justice as a rule of conduct are created. Only men are able to develop the sense of justice required to maintain the civil order and uphold the civil, universal law as citizen.¹⁸

From the above notion, it appears that the men created the social order that gave the ideal social expression excluding women from the notion of civil society, because men assumed that only they have power to take judgment in the civil society and their judgments never go wrong in the social order world.

Once women had been enslaved in the civil society and families formed, men had the concept of slavery and the means to extend their mastery: he found himself free to limit and to conquer to other human beings and he was fully secure in that his wife – that is to say, his female slave – would roast his meat and attend to any other of his needs.¹⁹ In Daniel Defoe's *Roxana*, the heroine proclaims that she thinks a woman was born free and...might enjoy that liberty to as much purpose as the man do. She continues the very nature of the marriage – contract was in short nothing but giving up liberty, estate, authority and everything to the man and the woman was indeed a mare woman even after that is to say a slave.²⁰

Furthermore, when women are a party to the men's contract, the employment contract, their bodies are

¹⁵Pateman and et al., *Political Obligation, Freedom and Feminism*, 182.

¹⁶ Pateman, *The Sexual Contract*, 83.

¹⁷ Pateman, *The Sexual Contract*, 100.

¹⁸ Pateman, *The Sexual Contract*, 101.

¹⁹ Ibid., 108.

²⁰ Ibid., 120

never forgotten. Women can attain the formal standing of civil individuals but as embodied feminine beings we can never be individuals in the same sense as men.²¹

When describing all these points from social and from public realm, it is defined from the view of human, yet women are considered as substandard in the civil society and public realm and they consider a woman less than human as women are not supposed to be compatible with men. It postulates that liberalism and socialism have embraced their doctrine and practice from patriarchal mindset and feminists need to reformulate this whole radical structure with strong conviction and commitment.

4.COMMENTARY

The liberty has been explained in two different notions, first, Rawls' concept of liberty from the perspective of a liberal and political philosopher. The other one is Carole Pateman's argument of liberty that criticizes patriarchal authority from the perception of feminist thinking. Carole Pateman's views about liberty and equality are as clear as Chrystal and I take my stand with Carole and oppose the Rawlsian concept of liberty. Rawls' statement in his first principle that '*all rational men are equal in the society with similar system for all*' opposes the rationality of women community and declares that women have nothing to do with such kind of wisdom. Carole Pateman's views about the marriage within the social contract are as phenomenon as she perceives the framing against women to make them compel for giving up their all liberty and everything to men and spend their lives no more than slaves.

Rationality can never be a property of a particular community and no gender is superior to others. The inception of equality can only be fixed when it exists for the women and the other genders too. In short, women can have their own choices of liberty only when they will develop their new thinking from the feminist perspective in the present time sphere without taking any reference from the laws and policies that were made within the framework of patriarchy.

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²¹ Ibid., 224