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A REVIEW OF THE LIBERAL THEORY OF JUSTICE: WOMEN'S INVISIBLE CONTRIBUTIONS TO FAMILY

Abstract

The cunning of separating the public and private spheres, stealing from the latter all the value, tarnishes the origins of some of the most important political theories of nowadays, as is the case with the liberal theory of justice. The consequence is that, in a sibylline manner, there is a systematic appropriation of the emotional and affective force and care capabilities of women, which has many negative consequences for them and for social cohesion. Occidental feminist theory has interrogated and displaced the border between these two worlds, public and private. As some socialist and marxist sectors have shown, the family absorbs, without compensation, the actions of women as identity builders, free wound healers of others and feeders of foreign egos. The broad spectrum of work that must be carried out to guarantee generational change and social functioning, arduous but invisible, is actually and it should be shown in social practice, a collective responsibility.

KEYWORDS

liberal theory, feminist theory, family law, ethics of care, theories of recognition

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liberalizm, feminizm, prawo rodzinne, etyka troski, teorie uznania

1. FEMALE FREEDOM TO CHOOSE BETWEEN VARIOUS VITAL PROJECTS AND PUBLIC POLICIES

If we talk about democratic quality, and we are interested in building fair societies, not only economically developed, but with a high rate of social cohesion, we cannot ignore the relationship between the sexes. One aspect of freedom is women's free choice between various vital itineraries from their deep self, from their most intimate authenticity, and not from the determinism of a defined socializing process or from guidelines set by irresponsible media addresses of communication¹. If the above does not take place, healthy, deep, lasting and happy interpersonal relationships will not be generated in society, and this will greatly affect the achievement of social cohesion. This requires adequate public policies that attribute the same political-social assessment to different vital projects of emancipatory tendency, to different forms of living full lives that women can choose, without being conditioned by different manifestations of symbolic power such as Bourdieu explains:

The continuous, silent, invisible injunctions that the sexually hierarchized world into which they are thrown addresses to them, prepare women, at least as much as explicit calls to order, to accept as self-evident, natural and "going without saying" arbitrary prescriptions and proscriptions which, inscribed in the order of things, insensibly imprint themselves in the order of bodies. Although the world always presents itself as strewn with indices and signs designating things to do or not to do, intimating the actions and movements that are possible, probable or impossible, the "things to do" and "the things forth-coming" that are offered (...)².

One of the crossroads that disturb the internal harmony of some women is the need to choose between projecting their personal fulfillment onto the construction of a family, putting the means to perform professionally, trying to reconcile both facets, case in which there will appear before or then the problems derived from the "mental" and "material" double working days. Men also have to decide what kind of life they want to live, but often they find an already established family, which they enjoy with minimal sacrifice or personal dedication

¹ M.A. Novales Alquézar, *Derecho antidiscriminatorio y género: Las premisas invisibles*, Santiago de Chile 2004, p. 176.

² P. Bourdieu, *Masculine domination*, R. Nice (transl.), Stanford, CA 2001, p. 56.

or, at least, taking advantage of a multitude of invisible tasks in the family that almost always end up being developed by women.

Institutionally, the syndrome contrary to King Midas³ has contributed a lot to the axiological abandonment of private life. Given this situation, real equality of treatment between men and women would require re-valorizing and re-signification of public policies.

2. LIBERAL THEORY AND UNPAID WORK

Given the situation described, the liberal strategy of excluding the private world from legal or political discourse, or from the epistemological field in general, is already “a taking of side”.

The origin of the private/public distinction is found in the Roman legal world, but the integration of ethics into politics, by not distinguishing the private from the public, is consistent with the characteristic thinking of Greek politics. The sharp separation between politics and ethics, that modernity brought to us, leads to a distinction between a private and a public sphere, each with its own rules, which implies a specific change in what is understood by politics, more linked to power than to justice. After Machiavelli, politics ceases to base wisdom on the fair order so as to occupy a very different entity: power.

The origin of the public sphere is not a mystery. The social contract generates the public world of civil law, civil liberty, equality, the contract and the individual. But what is the (conjectural) history of the origin of the private sphere?⁴ The truth is that the sexual and matrimonial contract was excluded from the social pact⁵. Regarding the exclusion of any reference to the private from the social contract, but without keeping women in the state of nature, Pateman writes:

Women have no part in the original contract, but they are not left behind in the state of nature – that would defeat the purpose of the sexual contract! Women are incorporated into a sphere that both is and is not in civil society. The private sphere is part of civil society but is separated from the “civil” sphere. The antinomy private/public is another expression of natural/civil and women/men⁶.

The distinction between a public and a private spheres is a strategy of patriarchy for women to join civil society differently than men. The cunningness of this skill tarnishes the origins of the most important political theories of today. This is

³ It consists in the devaluation of everything that is touched, trades, functions, tasks, consultations, problems, etc.

⁴ Cf. C. Pateman, *The sexual contract*, Stanford, CA 1988, p. 11.

⁵ M.A. Novales Alquézar, *op.cit.*, pp. 317–348.

⁶ C. Pateman, *op. cit.*, p. 22.

the case of liberal theory of justice⁷. Rarely asked are questions about the political significance of the existence of the two spheres, or how both emerged⁸. Arendt pointed out that *private* is etymologically related to *deprivation*. The private is what should be out of sight or what cannot be exposed. It is connected with shame and incompleteness. For Arendt, this notion of the private implies excluding from the public the aspects of human life related to the body and the affections⁹. Indeed, patriarchal civil society is divided into two spheres, but the focus is only on one, considered the only kingdom of political interest. The private sphere “is not seen as politically relevant. Marriage and the marriage contract are, therefore, also deemed politically irrelevant. To ignore the marriage contract is to ignore half the original contract”¹⁰. It is curious to detect how the most important works of modern Western thought focus attention in the public sphere by relegating what happens in the private to the background¹¹.

From the position of Nussbaum, when questioning the effective ways for the practical persecution of justice between the sexes, the liberal strategy of excluding the private must be qualified and she carries out this qualification from her theory of capabilities, but without abandoning liberal theory¹²:

By thinking of the affiliative needs of each person, as well as each person’s needs for the whole range of the human capabilities, we can best ask questions about how the family should be shaped by public policy, and what other affiliative institutions public policy has reason to support. I shall argue that the liberal account of basic capabilities I have been developing provides an even better framework for analysis, here, than standard liberal proceduralist approaches, since it is explicitly committed to a prominent place for love and care as important goals of social planning and as major moral abilities – within a life governed by the critical use of practical reason. At the same time, by not ruling any institution “private” and so off limits for purposes of public scrutiny, the capabilities approach avoids a common defect of at least some liberal theories¹³.

However, as Habermas recognizes, the interrelation between public space and private space can no longer be unknown. The world of life can no longer be hidden and draws attention to the criteria with which the public sphere is defined:

⁷ M.A. Novales Alquézar, *op. cit.*, p. 179.

⁸ I.M. Young, *Justice and the politics of difference*, New Jersey 1990, Sp. ed. S. Álvarez (transl.), *La justicia y la política de la diferencia*, Madrid 2000, p. 186.

⁹ H. Arendt, *The human condition*, Chicago 1958, Sp. ed. *La condición humana*, Barcelona 1993, pp. 58–67.

¹⁰ C. Pateman, *op.cit.*, p. 12.

¹¹ M.A. Novales Alquézar, *op. cit.*, p. 182.

¹² In fact, Nussbaum’s approach complements John Rawls’s liberal theory, although she misses in this theory a realistic psychology adapted to the human condition.

¹³ M.C. Nussbaum, *Women and human development: The capabilities approach*, Cambridge, UK, New York 2000, pp. 244–245.

(...) communication in a public sphere that recruits private persons from civil society depends on the spontaneous inputs from a lifeworld whose core private domains are intact. At the same time, the normative intuition that private and public autonomy reciprocally presuppose each other informs public dispute over the criteria for securing the equal autonomy of private persons, that is, criteria that specify what material preconditions of legal equality are required at a given time¹⁴.

Indeed, the importance of feminist theory in questioning and displacing the border between public and private is known. For example, feminist theory has revealed the danger of not universalizing an ethics of care. The application of the principle of care without restrictions engenders very important risks that directly affect distribution problems¹⁵. If we only attend to the principle of care without balancing it with that of justice, the conclusion results in unequally distributed responsibilities, i.e. links and responsibility only for some people. In any case, care is associated with a learning of will and the redefinition of practices, e.g. if the state health system covers 12 hours of child and dependent care, and 100 hours are needed, who covers the difference? Evidently, women, since the commitment comes to them, through the process of socialization, in a different way from how it reaches men, which translates into a diversity of expectations regarding what women and men should do and an abuse of women's attention and emotional abilities¹⁶.

In short, the concern for "care" reflects very well the general approach of feminist theory as a critical theory, raising doubts about the hierarchy between principles and agents, and unmasking the image of a moral agent as an agent with autonomy and without ties, uprooted in short, on which the entire building of the liberal conception of justice stands¹⁷, which forgets to bring to the forefront the reflection about who, how, and at what price will take care of children and dependent people in society.

Rawls himself, years after publishing his well-known theory of justice in 1971, and echoing the abundant feminist criticism to his liberal proposal¹⁸, publishes the article *The idea of public reason revisited*:

However, a liberal conception of justice may have to allow for some traditional gendered division of labor within families – assume, say, that this division is based on religion – provided it is fully voluntary and does not result from or lead to injustice.

¹⁴ J. Habermas, *Between facts and norms: Contributions to a Discourse Theory of Law and Democracy*, W. Rehg (transl.), Cambridge, Mass. 1996, p. 417.

¹⁵ Cf. N. Fraser, A. Honneth, *Redistribution or recognition? A political-philosophical exchange*, London, New York 2003.

¹⁶ M.A. Novales Alquézar, *op. cit.*, p. 183.

¹⁷ As graphically states S. Moller Okin, *Justice, gender and the family*, New York 1989, p. 13: "To a large extent, contemporary theories of justice, like those of the past, are about men with wives at home".

¹⁸ Cf. Novales Alquézar, *op. cit.*, pp. 86–167.