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Topic 3

A legally unrestricted majority rule, that is, a democracy without a constitution, can be very formidable in the suppression of the rights of minorities and very effective in the suffocation of dissent without any use of violence.

Hannah Arendt, On Violence (1970)

At the first sight Hannah Arendt's quote seems quite paradoxical, since she states that an "unrestricted majority rule (...) can be very formidable in the suppression of the rights of minorities". But why does she assume that there actually are minority rights in a system without a constitution? In terms of law positivism rights do not exist if they haven't been agreed to by a society and therefore one can only claim minority rights if there has been consent to introduce them. However this position may appear to be too harsh, because it rejects the notion that the mere fact of being a human being gives us certain fundamental rights which mustn't be violated. Here we have to contrast two different views on how to treat people in a community or a state.

One important approach for deciding if minority rights should be part of the law is classical utilitarianism. As the English philosopher Jeremy Bentham points out, the vital premise for acting morally is "the greatest good for the greatest number". According to this ethical law it could be argued that minority rights are to be introduced, because the greatest good can be achieved, when as many people as possible have the basic rights to fulfill their wishes and to experience happiness, since there would be no discrimination against them and this would maximize the overall utility. But on the other hand one could say that this guess isn't necessarily true. Just imagine these two thought experiments:

1.) There is a terrible economic recession and many people have lost their jobs. Minimum wages have been cut down and austerity measures are forcing people into poverty. People are depressed, because they are afraid that they won't manage to cope with this situation any further and the suicide rate is skyrocketing. The government lives in fear. Maybe there will be massive uprisings and protesters are going to overthrow the ruling elites. So the president has an idea, stating that they have to find a small minority which is disliked by the majority of the people and can hence play the role of a scapegoat. Thus the minority is persecuted and tortured, because it simply makes many people happy to see the minority suffering. A consequent utilitarian has to agree that

this would be the right decision because the tremendously good feeling that the vast majority has, while regarding the others in pain, outweighs the suffering of the few.

2.) There's an affluent city and its citizens enjoy their daily life. Nobody is poor and everyone has myriads of opportunities to indulge his spare time. But there is one condition upon which this utopian city can exist: In the 30th floor of a skyscraper there's a small child being enthralled and beaten up all day long. If the child would escape, then the paradise city would be transformed into a normal place again - with all its tragedies. So what should the government do? Once again, ardent utilitarians favour the fact that the child is being tortured, because it maximizes the happiness of the city.

Considering these two thought experiments, we can conclude that the utilitarian approach doesn't really care about fundamental human rights or minority rights as well as it fails to respect human dignity. So Hannah Arendt wouldn't prefer this way of thinking as she herself invokes the necessity of these rights.

Secondly I want to explore Immanuel Kant's view on fundamental human rights. Kant refuses the utilitarian proposal that the only thing that counts is the greatest good for the greatest number. For him, human beings should not be treated as means for something or someone else. That's exactly what utilitarian consequentialism tries to do. It regards people as means for balancing utility. But, as Kant points out in the "Groundwork of Metaphysics", this is the wrong approach. Humans are capable of reason and therefore they can act autonomously, meaning to act in accordance with a law they give to themselves, the categorical imperative. It is clear that the categorical imperative does not allow to treat people as means for an external goal, because one could not universalize this principle as a moral law. In a Kantian way of deliberating we must respect minority rights because people have a meaning in themselves. Torturing the small child in a skyscraper is wrong because it fails to respect the child as human being and treats it as means for the city's happiness.

Having explored two possible positions with regard to the question if minority rights should be established or not, it seems obvious for me that only the Kantian thesis supports their existence and can be used for arguing in favour of fundamental human rights as Hannah Arendt does.

However the question remains in how far it is possible in a democratic society to be "very effective in the suffocation of dissent without the use of violence". The Marxist theoretician Antonio Gramsci offered a compelling concept to find out how it works that a ruling system is able to prevent people from criticizing the dominating ideology in a capitalist society. He referred to this concept as "cultural hegemony". Gramsci was elaborating his theory on the Marxist claim that the economic basis of a society determines the superstructure including culture, ideology, politics, philosophy etc.. As Marx himself said the "ruling ideas are always the ideas of those who are ruling". Gramsci ascertained that the cultural hegemony guarantees that the ruling class is not confronted with adequate resistance, since the ideology production in the cultural hegemony

suggests people that the current way of governing is superior to all the alternatives. It is therefore very difficult to break in this closed circle of hegemony, considering that basically everything is infiltrated by the ruling ideology, no matter if you talk about films, laws or moral constraints. There is a famous quote by the former British prime minister Margaret Thatcher, which fits very well. She once said: "There is no alternative". What she intended to make sure with this quote was that people shouldn't even try to imagine an alternative to the neoliberal regime she imposed. That's exactly how hegemonial ideology production works. You have to give people the impression that a systematic change is impossible anyway and that they have to put up with the fact that they can't alter the ruling laws of a society. The same is valid for the theory of the Hegelian philosopher Francis Fukuyama who promoted his idea, that after the disintegration of the socialist states there will be no seminal changes in history any more, since the antagonism to capitalism, which is socialism, has disappeared. He called his book where he mentioned this proposal "The end of History". By saying that history will not proceed anymore, one is able to "suffocate dissent without any use of violence". To sum up this section, it can be said that a ruling elite can be formidable in the suppression of minority opinions by imposing a cultural hegemony which disables people to voice their criticism, because they have difficulties to get into the exclusive circle of ideology production. Another way of suggesting people that they are a minority which can't interfere in the decision-making process, is to persuade them that there is no alternative to the dominating political mainstream.

Hannah Arendt in her quote promotes the idea of a constitution, which shall guarantee that the abuse of power and the disregard for minority rights can't be put into practice. But how should such a constitution look like and how should we decide on it? The problem here is that everyone of us is biased in a certain sense, because we always include our personal standing when we deliberate about laws and rights. A rich investment-banker would probably argue against taxes for wealthy people while a military general would not like the concept of disarmament and peaceful negotiations. It's quite logical that everyone of us tends to take his/her own position into consideration when thinking of a fair and just constitution. The 20th century philosopher John Rawls tried to find a solution to this problem, which he describes in his "Theory of Justice". He writes that we have to abstract our personal preferences when we think about the common good. What we need to do, is to go behind a "veil of ignorance", which means that we leave all our knowledge of who we are as individuals when we reflect upon a potential constitution. So we don't know where we are from, what we look like or how many money we have, when we are behind the veil of ignorance. Rawls asks the question on which rules we would reach agreement if we would be in this hypothetical position to develop a contract for society. (It should be mentioned that according to Rawls a hypothetical contract is far more powerful and crucial than a real one, since it isn't biased. Therefore the hypothetical contract behind the veil of ignorance applies in real life and should be taken into consideration when deliberating about a just constitution.) There are two premises which would be included in such a contract:

- 1.) Everyone has the same fundamental rights and should be treated alike. Everyone is entitled to freedom of speech, electing a government and other basic democratic values. Everyone shall be regarded as an individual with dignity and so cannot be used for the purpose of someone else's attempts.
- 2.) The income distribution has to be arranged as equal as possible. Wage differences are only allowed if the least advantaged profit ("The difference principle"). This means that it might be inconvenient that everyone earns the same, because there might be no incentives anymore and so differences are permissible if it's good for everyone.

Why would we choose these principles? Behind a veil of ignorance we don't know who we are and so we wouldn't want that a minority doesn't have fundamental rights, since we could turn out to be in the minority ourselves. But only very few people would want to risk that they don't have democratic rights and freedom of speech. Furthermore we would not want a very unequal distribution of wealth as it happens to be now. Keeping in mind that 2% of the world population possess half of the global fortune nobody (except a passionate gambler) would create such a distribution scale, because the chance of belonging to a low social group is far too high. So we tend to prefer an egalitarian distribution behind the veil of ignorance. We would accept differences only given the case that it's better for the common good.

To summarize the above mentioned arguments, four main points can be detected with reference to Hannah Arendt's quote that *"A legally unrestricted majority rule, that is, a democracy without a constitution, can be very formidable in the suppression of the rights of minorities and very effective in the suffocation of dissent without any use of violence."*

- 1.) Minority rights can only be violated if we base our moral motives on utilitarian principles of maximizing utility rather than on the Kantian ethics which invokes that human dignity isn't alienable because the mere fact that we're human beings who are capable of reason and therefore acting autonomously rational, forbids that we're used as means for others. Hence everyone is entitled to the same fundamental human rights.
- 2.) In a capitalist society there's a tendency to produce cultural hegemony which stabilizes the system through not giving alternative ideologies a chance to promulgate their opinions. For this reason dissent can easily be suffocated.
- 3.) In order to avoid these hegemonies we have to outline a just constitution behind a veil of ignorance, where we abstract our personal preferences and thus also ideological influences we have experienced.
- 4.) This constitution contains judicial equality as well as economic equality, taking into account that the latter can slightly be changed according to the difference principle.