

## **Essay no. 25**

### **Majority, constitutions and the creation of a democracy – an essay**

*“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 the use of violence.”*

*Hannah Arendt, On Violence (1970).*

#### **Introduction**

Living in the 21<sup>st</sup> century, an age of not only globalization, but a slow – and imperfect – dispersion of democratic ideas and systems of governance throughout the globe (the examples ranging from the collapse of the Eastern Bloc to the more recent Arab Spring), Hannah Arendt’s thoughts are just as relevant today as at the time of their publication.

Is the formulation of a constitution a must for a functioning democratic society? How strong a popular consent must be to legitimize the formulation of decisions, laws, and even, a constitution? Can true democracy exist – is there even something which can be considered as a “true” democracy?

This essay will try to examine the elaborate relationship between three distinct concepts: majority rule, democratic rule and constitutional rule from a philosophical point of view. Beginning with the examination of the distinctions between majority rule and democratic rule, we will continue by analyzing two important questions of suppressive majority rule – whether the majority can rule, and whether the majority does rule. We will continue by questioning Arendt’s thesis that a democratic system of governance necessarily requires a constitution; finally, we will examine what alternative guarantees may exist to safeguard the existence of a democratic society.

#### **Defining democracy**

In order to be able to examine a relationship between distinct concepts, Carnap would suggest to establish clear (and in a Popperian sense, falsifiable) definition of the analyzed phenomena. That brings us to our first question: what is democracy?

The modern usage of the word describes a form of governance where the power to make decisions in a society lays in the hands of either the populace as a whole, or in the hands of their elected and accountable representatives. Common usage of the word hence usually implies that democracy is the most inclusive and hence, the most ideal form of government – yet the word originally had a different meaning.

Democracy, from Greek “rule of the masses” originates in the ancient city-state of Athens, whose inhabitants used the word to describe their own form of government. Yet their system of governance was far from perfect – famously, the philosopher Plato condemned Athens in his treatise *State* for allowing unrestricted majority rule resulting in the execution of Socrates, instead favoring a state headed by philosopher-kings. The other great Greek classic, Aristotle argued that many simultaneously right forms of

government may exist based on their level of inclusivity (kingdom, aristocracy and politeia), as long as the decision makers always act in accordance with the good of the state, not with their own personal interests. Should the latter occur, every government may become distorted – kingdom into tyranny, aristocracy into oligarchy and politeia into democracy.

Notice the common pattern of thought – democracy in both Plato’s and Aristotle’s usage refers *democracy as the unrestricted rule of majority*. Yet many people today would strongly disagree with such a statement – are they right to do so?

While the Enlightenment philosopher Jean Jacques Rousseau would have agreed with the definition, our modern concept of democracy however originates from his compatriot and contemporary, Charles Louis Montesquieu. According to Montesquieu, governments are only to be considered democratic – and by extension, he argued, ideal – if the state separates the three branches of government: legislative, executive and judiciary. If this separation happens, then each of the three branches will constantly monitor the other two not to overstep it’s authority, and a stable form of government may be achieved.

Consequently, *unrestricted majority rule doesn’t satisfy democratic requirements*; without separation of the three branches, the unrestricted majority (the legislative branch) will take over the other two, dissipating democracy. But is Montesquieu right when setting up such rigorous criteria for democratic governments? Why can’t be, for example, the “popular republics” of the former Eastern Bloc considered democracies, by their own definition?

According to the American philosopher Charles Sanders Peirce, *something is to be considered to be true when established as so by every member of a community*. According to Peirce, then, popular republics may rightly consider themselves democracies by convincing their citizens to accept their governments as so. Yet something seems instinctively off with the concept – wouldn’t such an arbitrary concept of truth lead to the sort of dystopian society that is depicted in George Orwell’s novel *1984*? (Don’t forget that by the end of the novel, Winston Smith himself believed in the Big Brother.)

The answer is not trivial – but while detailing alternative democratic safeguards we will see that Montesquieu is indeed right by maintaining that democracy entails something more universal than simple majority consent.

### **Does the majority rule?**

Having established the distinction between majority rule and democracy, let’s examine the specifics of the sort of “unrestricted majority rule” that Hannah Arendt describes in this excerpt. First, let’s examine the question from a practical point of view – *does the majority ever rule a society?*

At first glance, the answer would be obvious – yes, in the case of Athens, the adult males of the society ruled as a non-democratic majority (*Democratic here refers to democracy in the sense of Montesquieu*). Such a system created the sort of legitimization for the system that it required to maintain its stability – yet when we think deeper, additional examples are hard to come by.

For example, in the case of Nazi Germany, Adolf Hitler rose to power by obtaining 44% of the votes, then forming a coalition to achieve the support of the majority of representatives – yet it’s hard to argue that

Hitler's regime represented the majority interests of its citizens – even though he claimed to do so. The Italian political philosopher Niccolò Machiavelli argued that a ruler *must act as if they were representing the will of the majority* – but he deemed it counterproductive to actually do so. By extension, if we examine the non-democratic regimes claiming to represent the interests of the majority, we will find that they were, actually, promoting the interests of small elites – simultaneously claiming in a Pierce-like sense that they were the majority. The list of historic examples range from Nazi Germany to the Soviet Union and the Eastern Bloc – in practice, the term “majority rule” referred to a totalitarian regime. Even in the case of Athens, *true majority rule* is questionable – since in reality, political power often concentrated in the hands of the elected generals such as Pericles, who used his popular support to exile his personal enemies and assert his political dominance on the city.

Consequently, what Arendt states as the effective suppression of minorities by an unrestricted majority is actually something different – the effective suppression of minorities by a small elite, claiming to be ruling in the name of majority. That's called a dictatorship – not the rule of majority.

Even if we deny the part of Arendt's claim stating that the rule of majority can successfully oppress without violence, what about a modified version – whether dictatorships may successfully oppress without the use of violence?

The answer is, surprisingly, yes. Just as our brief mention of George Orwell's novel would suggest, the human mind is remarkably susceptible to extended psychological pressure, and propaganda – several members of the former Eastern Bloc had no formidable military forces of their own, relying instead on a “live and let live” approach, first initiated in the aftermath of Khrushchev's dismissal as Soviet Premier and the subsequent mitigation of the intensity of the Cold War. In Peirce's words, the populace of these countries accepted their regimes as legitimate and unchangeable – leading to no or few use of violence, but stable dictatorships.

### **Can the majority rule?**

Having shown that in practical terms, majority rule is hardly, if ever an actual political occurrence, the thought arises that it may be *a priori* impossible for a majority to rule a society. Let's examine the question from a theoretical point of view – *can* a majority ever rule a society?

To establish a political system where the political majority may unrestrictedly rule, the system must satisfy one of two conditions: 1) *Allow every member of society direct participation in decision making*, or 2) *Create a representative system which correctly represents the (still unrestricted) will of the majority*. Note the term representative: 50%+1 of the voter's preferences still need to be accurately presented to describe something as *true majority role*.

The American political scientist and economist Keith Arrow has long established that when considering any elective system of representation, the presence of more than two alternatives for candidacy will *mathematically exclude the possibility of a truly representative electoral system*, when weighing every vote at its face value. Setting the epistemological problem of whether we accept mathematic conclusions as decisive proofs for phenomena aside (and noting that even skeptics of empirical evidence such as the rationalist Rene Descartes would accept Arrow's thesis, given that Arrow's reasoning is purely mathematical), this means that in reality, *no true majority rule can exist*.

Hence given that every majority opinion is formulated as the sum of opinions of individual members, even Rousseau would have to accept that his *general will* of the majority can't be realistically created, since to establish true majority consensus, we would then need to establish the majority of majority, then the majority of the majority of majority, etc. in an infinite loop.

This consequently means that true majority rule can't exist – when unrestricted, majority rule will inevitably turn into the rule of the few, claiming to be ruling in the interests of many - just as Machiavelli has predicted. But what about democracy then – is it the *restricted* rule of majority? Is it something else? In the next part, we will examine Hannah Arendt's thesis that the restriction which provides the basis for democracy is a polity's constitution.

### **The role of constitution**

Arendt claims that in order to successfully create a democratic society, the democratic principles of the state – principally, as derived from Montesquieu, the separation of the branches of government – need to be fixed in a constitution, or their restrictive power won't be sufficient. This raises two questions – what is a constitution, and how is it written?

Constitutions are, essentially, a body of basic principles which determine the frameworks of any society, regardless whether they are democratic or not (The Magna Charta, codifying the feudal system of Medieval England is a fine example of this). So constitutional rule simply means *rule in accordance with the basic principles which determine the frameworks of society* – regardless of whether these principles are democratic or not.

A fine contemporary example, paradoxically, would be the United States of America; while it was the country to first produce a written constitution which we widely consider democratic in 1788, few would be satisfied with that constitution today, disenfranchising women and colored people from voting. More strikingly, after the inclusion of the 13<sup>th</sup> Amendment to the American Constitution in 1865 erasing legislative differences between races, blacks were still heavily discouraged from political participation for a century, until the successful struggle of Martin Luther King in the 1960s – showing that a constitution may well be ahead of its time and contradictory to actual political practice. Another example would be the United Kingdom, which to this day lacks a written constitution – yet it is widely considered to be one of the most inclusive societies today, with a highly efficient democratic system.

Such empirical evidence seems to disprove (in a Popperian manner, falsify) Arendt's statement regarding the importance of the constitution – but what is it then, that keeps societies basing their government on the *rule of majority* that keeps this rule from becoming *unrestricted*, leading to tyranny?

### **The making of a real democracy**

The answer to the question of democratic safeguards comes – ironically – from one of the first critics of democracy, Aristotle. His theory of morals suggests that in order to be able to function as members of a society, morals (responsibilities and roles) need to be practiced by every member; for a newcomer (like a children), this comes from the recognition of right as shown by elders and members of authority (like parents), and from recognizing the extremes of any virtue (e.g. in the case of bravery, one must recognize

the extremes of cravenness and foolhardiness correctly). This latter is what Aristotle calls the application of the golden mean – a useful guideline for living our lives morally.

The contemporary Scottish philosopher, Alasdair MacIntyre expands Aristotle's concept by stating that our individual responsibilities and roles derive from "narratives", character concepts learned from our environment – for example, students learn how to behave like students because of the examination of the existing student narrative. This in turn means that every member of society is shaped by the existing *tradition* of elders, and hence societal changes only occur when a narrative itself is changed by the participants.

This explains the failure of the 13<sup>th</sup> Amendment to effectively eradicate racial segregation – in the South, where the separation of blacks was the societal norm (narrative), meaning that no single piece of legislation could change the preconceptions of the populace, change had to occur gradually (by exposing whites to experiences with blacks, and a race-conscious education condemning segregation). It also explains the success of democratic institutions in the United Kingdom despite a written constitution – people "got used to" democratic behavior and that their representatives were accountable regardless whether it was written on paper or not.

These phenomena have profound consequences for the philosophical underpinnings of democratic societies. In effect, such societies are ruled not by the *unrestricted rule of majority*, which as we have shown will inevitably result in a dictatorship (as Edward Burke has famously argued), but rather by a *restricted rule of majority*, which, due to extensive democratic traditions in successful democratic countries, could be better phrased as the *restricted rule of plurality*. In such countries, voters and their representatives are well aware of the plurality of interests in their country, and even when in power, will act in accordance with as many interests as possible – in effect, leading to what Aristotle has categorized as a *politeia*, or a true democracy.

## Conclusion

Democratic rule, constitutional rule, and majority rule are three distinct concepts, as this essay has shown. Democratic rule is what governs most contemporary Western societies – characterized by a *restricted rule of plurality*, based on democratic traditions and Montesquieu's separation of branches of government. Constitutional rule is something different – it means *ruling in accordance with the basic frameworks of a society* – regardless of the exact nature of those frameworks. Finally, majority rule was shown to be a *virtual* concept – inevitably leading to rule by elite.

Consequently, Hannah Arendt's claim regarding the lack of constitution leading to unrestricted majority rule, which in turn leads to the successful oppression of minorities and violence is flawed on two premises. Firstly, it is not the constitution which keeps governments from becoming unrestricted – they are the democratic traditions cultivated by the citizens. Secondly, unrestricted majority rule is an empty concept – for it actually hides the oppression of many by the few, inevitably leading to a form of dictatorship.

However, this does not mean that countries without democratic traditions are forever barred from becoming successful democracies. Just as in the case of the eradication of racial segregation, changes may very well come gradually – by successful education and frequent interaction, the tolerance for plurality may be established and a successful democracy may be created.