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The Great Tradition: I. Law and Power

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# Hannah Arendt

## The Great Tradition

### I. Law and Power

SINCE PLATO, ALL TRADITIONAL DEFINITIONS OF THE NATURE OF THE various types of government have rested on two conceptual pillars: law and power. The differences between the various forms of government depended on the distribution of power, whether one single man or the most distinguished citizens or the people possessed the power to rule. The good or bad nature of each of these was judged according to the role played by law in the exercise of power: lawful government was good and lawless bad. The criterion of law, however, as a yardstick for good or bad government was very early replaced, already in Aristotle's political philosophy, by the altogether different notion of interest, with the result that bad government became the exercise of power in the interest of the rulers, and good government the use of power in the interest of the ruled. The types of government, enumerated according to the power principle, did not change in either case: there were always the three basic forms of monarchy, aristocracy, and democracy and the corresponding three basic perversions of tyranny, oligarchy, and ochlocracy (mob-rule). Still, modern political thought is liable to over-emphasize and misconstrue Aristotle's conception of interest: *dzên kai eudzên* is not yet the rule that "commands the king" (as Cardinal Rohan put it much later), but designates the different concerns of the rich and the poor with which the laws ought to deal according to the principle of *suum cuique*. Rule in the interest of all, therefore, is not much more than a particular interpretation of rule in accordance with *just* laws.

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A curious equivocality concerning the relationship between law and power has remained hidden in these well-known clichés. Almost all political theorists without noticing it use two altogether different similes in this regard. On one side, we learn that power enforces law in order to bring about lawfulness; on the other, the law is conceived as the limitation and the boundary of power, which must never be overstepped. In the first case, power could conceivably be understood as a necessary evil, whereas in the second case this role would much rather fall to the function of the law, which seems to owe its existence to the necessity of hedging in an otherwise free and “good” force. Following the traditional category of means and ends, power in the first instance appears as an *instrument* to execute the law, and in the second instance the law appears as an *instrument* to hold power in check. One consequence of this equivocal understanding of the relationship between law and power appears obvious at first glance. If power is only there to enforce and execute the law, it cannot make much difference whether such power resides in one man, or in a few people, or in all of them. There can be only one essential difference—the difference between lawful or constitutional government and lawless or tyrannical government.

The term tyranny, therefore, from Plato onward was used not only for the perversion of one-man rule, but also indiscriminately for any lawless government, that is, any government that in its decisions was bound only by its own will and desires—even if these were the will and desires of a majority—and not also by laws that could not become subject to political decisions. We find the last consequence of this line of thought in Kant’s *Zum Ewigen Frieden*, where he concludes that instead of distinguishing many forms of government, one could say that there are only two, namely, constitutional or lawful government, irrespective of who or how many possess power, and domination or despotism. All traditional forms of government are for Kant forms of domination; they are despotic because they are distinguished in accordance with the power principle, and in them whoever possesses power possesses it as a “sovereign,” undivided among and unchecked by others. Against monarchy, aristocracy, and democracy, Kant sets constitutional govern-

ment, where power is always checked by others and which he calls "republican," irrespective of all other criteria.

But if we turn to the second simile in the relationship between law and power, according to which the law is seen as a hedge or wall surrounding powerful men who without this limitation might abuse their strength, the differences between traditional forms of government, between monarchies, aristocracies, and democracies, become all important. The question is now whether only one man, or the most distinguished few, or the whole people should be permitted to exercise power within the limitations of the law. In this context, it is obvious why the rule of one man should be identified with tyranny or, at any rate, be the closest to tyranny, and why democracy should be regarded as the best form of government. Monarchy now comes to mean that only one man is free, aristocracy that freedom is granted only to the best, and democracy alone can be considered free government. We find the last consequence of this line of thought in Hegel's philosophy of History, in which world history is divided into three eras: the oriental despotism where only one was free, the ancient Greek and Roman world where some were free, and finally the Christian Occident in which all are free, because man as such is free. The most striking aspect of this ever recurring equivocality in the concepts of law and power is that we do not deal here simply with two different strands of our tradition, but that, on the contrary, almost all of the great political thinkers use both similes indiscriminately.

I HAVE ENUMERATED THE FORMS OF GOVERNMENT IN THE WAY THEY were formulated and defined in the tradition, whose foundation was established not through historical curiosity about the manifold ways of life of different peoples, but through Plato's search for the best form of government, a search that sprang from and always implied his negative attitude to the Athenian city-state. Ever since, the quest for the best government has served to conceptualize and to transform all those political experiences that found their home in the tradition of political thought, which nowhere else perhaps shows its comprehensiveness more impressively than in the astounding fact that not a single novel form of government has been added for 2,500 years. Neither the Roman Republic nor the

Roman Empire, neither the medieval kingship nor the emergence of the nation-state was felt to warrant a revision or addition to what was already familiar to Plato. Surprisingly enough in view of its tremendous consequences, the distinction between ruling and being ruled as a condition for all organized society was introduced by Plato in an offhand, almost improvisational manner, while the concept of law assumes its central place as the very content of all political life only in his last treatise, the *Nomoi* (*The Laws*)—which, by the way, was lost and rediscovered only in the fifteenth century—and there the laws are understood to be the visible, political translation of the ideas of the *Republic*.

Yet, if in the quest for the best government the question of laws originally played a subordinate role, its role was always major in the definition of tyranny as the worst form of government. The reason for this early constellation lies in the specific political experience of the polis, which Plato as well as Aristotle could not but take for granted. The pre-philosophical Greek political experience had understood laws to be the boundaries men establish between themselves or between city and city. They hedged in the living space that each was entitled to call his own, and they were sacred as the stabilizers of the human condition, of the changing circumstances and movements and actions of men. They gave stability to a community composed of mortals, and therefore continually endangered in its continuity by new men born into it. The stability of the laws corresponds to the constant motion of all human affairs, a motion that can never end as long as men are born and die. Each new birth endangers the continuity of the polis because with each new birth a new world potentially comes into being. The laws hedge in these new beginnings and guarantee the pre-existence of a common world, the permanence of a continuity that transcends the individual lifespan of each generation, and in which each single man in his mortality can hope to leave a trace of permanence behind him. In this sense, which asserted itself with the rise of the Greek polis, the laws constitute the common public world outside of which, according to the Greeks, human life was deprived of its most essential concerns.

The great advantage of the polis organization of public life was that the polis, because of the stabilizing force of its wall of law, could

impart to human affairs a solidity that human action itself, in its intrinsic futility and dependence on the immortalizing praise of poets, can never possess. Because it surrounded itself with a permanent wall of law, the polis as a unity could claim to ensure that whatever happened or was done within it would not perish with the life of the doer or endurer, but live on in the memory of future generations. Its great merit over kingship, the reason why, mythologically speaking, the Greeks saw in King Theseus's founding of Athens the last and greatest kingly enterprise, was candidly and succinctly given by Pericles, who praised Athens because it did not need a Homer to leave, for better and for worse, "innumerable monuments" of the deeds of its sons.

This early meaning of *nomos* is still present in Plato when he evokes Zeus as the God of boundaries at the beginning of his discourse on *The Laws*, as it was present in Heraclitus when he stated that a people must fight for their laws as they fight for the wall (*teichos*) of their city. Just as a city could come into being physically only after the inhabitants had built a wall around it, so the political life of the citizens, *politeuesthai*, could begin only after the law had been posited and laid down. The fence of the law was needed for the city-state because only here people lived together in such a way that space itself was no longer a sufficient guarantee for assuring each of them his freedom of movement. So much was the positing of the law felt to be a condition of polis life that legislation, law making itself, was not considered a political activity: the lawmaker could be a man called in from the outside or, like Solon, someone who after laying down the law retired from public-political life, at least for a time. So much was law thought to be something erected and laid down by men without any transcendent authority or source that pre-Socratic philosophy, when it proposed to distinguish all things by asking whether they owe their origin to men or are through themselves what they are, introduced the terms *nomô* and *physei*, by law or by nature. Thus, the order of the universe, the *kosmos* of natural things, was differentiated from the world of human affairs, whose order is laid down by men since it is an order of things made and done by men. This distinction, too, survives in the beginning of our tradition, where Aristotle expressly states that political science deals with things

that are *nomô* and not *physei*. It is in this context that the tyrant who razes the boundaries of the laws destroys the political realm altogether. He is not a ruler but a destroyer, destroying the walls of the city, the pre-political condition of its existence.

Very early, however, and even before the beginning of our tradition, there already existed another altogether different understanding of law. When Pindar says: *nomô basileus pantôn* we may be justified to translate his words: "the law is the ruler of all things," and understand this to mean that just as the king holds together and gives order to whatever is begun under his leadership, so the law is an order inherent in the universe and governs its motion. This law is not laid down, is not posited by either men or gods; if it is called divine, it is so only because it rules even the gods. This law, obviously, could not be conceived as a wall or boundary erected by men. Laws derived from or nourished by it had a validity that was not restricted to one community, nor to the public realm as such, nor generally to matters that happen *between* men as distinguished from those that happen *within* men. The cosmic law was universal in every respect, applicable to all things and to every man in every situation and condition of life. The distinction between *physei* and *nomô*, between things that grow naturally and things that owe their existence to men, loses its relevance, because one law presides and rules over both. The later concept of natural law, as it was developed in Greek Stoicism, is clearly already indicated, but for an understanding that saw laws in the image of fences and boundaries that hedge in, protect, and establish the various common worlds of the polis, the very term "natural law" would have been a contradiction in terms, since it assumed that things are what they are either by nature or law, but not both.

Of even greater importance for the tradition is that under the assumption that one law rules over all things moral and political, the private and the public realm of life are no longer clearly distinguished, but are both embedded in and ruled over by the eternal order of the universe. Men belong in this universe because, in the words of Kant, "the starry heaven above me" corresponds in its ordered lawful sublimity to "the moral law within me." This law has lost the character of limitation manifest in all positive law codes that contain prohibitions rather than

prescriptions, and that therefore leave everything that is not clearly prohibited to the free decision of those who are subject to them. The conflict between private and public morality, between things permitted and demanded in personal intercourse and those that are required by the necessities of politics, which naturally arises from the assumption of a universal law, could be decided either way: in conformity with the necessities of political life at the expense of private morality—as for instance in Hobbes who, starting from the public-political realm where power originates, concludes that the nature of man is that of a “power thirsty animal”—or, on the contrary, in conformity with the behavior of each man in his individual privacy, as in the instance of Kant, where the law within me elevates me into a universal legislator. In either case, the universality of one law is saved: those who obey and submit meekly to the laws of power are by nature power thirsty; those who obey the laws of the city recognize in themselves the nature of moral lawfulness.

However, throughout our tradition the distinction between the cosmic law in its universal validity and the rules and prescriptions valid only among a clearly defined group of men was kept and their relationship seen more or less in the image that we find for the first time in Heraclitus: “All human laws are nourished by the one divine law; for this holds sway as far as it will, and suffices for all, and prevails in everything” (Frag. 114). It is decisive that our legal tradition always held that positive manmade codes of laws were not only derived from but also depended upon the one universally valid law as their ultimate source of authority. It is this same distinction and relationship that we later find between the *ius civile* and the *ius naturale*, between positive law and natural law or divine command. In each instance, the earlier notion of the law as a fence survives in the codes of posited laws through which the one universal law is translated into human standards of right and wrong.

The one universal law, or later the Command of God, is understood to be eternal and unmovable and from this eternity the positive manmade laws derive their relative permanence through which they can stabilize the ever changing affairs of men. What happens when this distinction between universal and positive law is no longer upheld—that is, when the universal law in the modern form of a law of devel-



opment, natural or historical, has become a law of movement which cannot but constantly override positive man made codes of rules and prescriptions—we have seen in the totalitarian forms of domination. There terror, as the daily execution of an ever-changing universal law of movement, makes all positive law in its relative permanence impossible and drives the whole community into a flood of catastrophes. This danger is latent wherever the old concept of a universal law is deprived of its eternity and, on the contrary, is combined with the modern concept of development as the ever-progressing motions of nature or history. If one considers this process from the point of view of the history of ideas one can easily, albeit fallaciously, come to the conclusion that totalitarian domination is not so much a break with all traditions of Western man as the outgrowth of a philosophical “heresy” that culminated in Hegel and was practically applied by Darwin or Marx, whom Engels called the Darwin of history.

The idea of one universal law remained more or less a concern of the philosophers while the jurists, even though they agreed on the necessity of an ultimate (and even transcendent) authority to give their laws legitimacy, continued to think of laws as boundaries and relations between people. This difference is very marked in the twofold origin of natural law that also and independently developed from the Roman *ius gentium*, a law erected between different peoples whose cities prescribed different civil laws. Here, the natural law is neither understood to spring from and operate within each human being nor to preside from above and rule supreme over all happenings in the universe, but as the specific channels of communication and intercourse that are necessary between city and city, between one legal code and another—unless one city wants, in Greek fashion, to live isolated against or destroy another. The Roman influence remained strong in the strictly legal tradition; in the philosophical tradition of political thought, it remained as uninfluential as other Roman experiences.

The standards of right and wrong as they are laid down in positive law have, as it were, two aspects: they are absolute insofar as they owe their existence to a universally valid law, beyond the power and the competence of man; but they are also mere conventions, relative

to one people and valid within limitations, insofar as they have been posited and framed by men. Without the first, the universally valid law would remain without reality in the world of men; without the second, the laws and regulations laid down by men would lack their ultimate source of authority and legitimation. Because of this relationship and its twofold aspect, the specific legality of government, which historically is characteristic only for the polis and the various republican forms that are derived from it, could become, in the framework of the tradition, the mainstay of all bodies politic. Enforcement of law finally is seen as the chief duty of government and lawful government is considered good no matter how many people or how few share in and enjoy the possession of power. At the end of this tradition, we find Kant's political philosophy, where the concept of law has absorbed all others. Here the law has become the criterion for the whole realm of politics to the detriment of all other political experiences and possibilities. Lawfulness is the only legitimate content of human living together and all political activity is ultimately devised as legislation or application of legal prescriptions.

We have sketched this much later development in order to arrive as though through a short-circuit at a position where rule and law actually coincide; where constitutional government is no longer one among various possibilities to rule and act within the framework of the law, but a government where the laws themselves rule and the ruler only administers and obeys the laws. This is the logical conclusion of the last stage of Plato's political thought as we know it from the *Nomoi*.

THESE CONSIDERATIONS SEEMED NECESSARY FOR AN UNDERSTANDING of the last thinker who, still in the line of the great tradition, inquired into the nature of politics and asked the old questions about the different forms of government. Montesquieu, whose fame rests securely in the discovery of the three branches of government, the legislative, the executive, and the judiciary—that is, in the great discovery that power is not indivisible—was a political writer much rather than a systematic thinker. This enabled him to touch freely on and reformulate almost unintentionally the great problems of political thought as they had

come down to him, without encumbering his new insights by making one working whole of them, and without disturbing the inner consistency of his thought with ulterior motives of presentation. His insights are in substance much more “revolutionary” and at the same time more enduringly positive than those of Rousseau, who is his only equal in the weight of sheer immediate impact on the eighteenth-century revolutions and of intellectual influence on the political philosophy of the nineteenth century. His lack of systematic concern, on the other hand, and the loose organization of his material have made it deplorably easy to neglect both the inner consistency of his widely scattered thoughts and the distinct unity of his approach to all political matters, which separates him only slightly less from his successors than from his predecessors.

Hidden beneath the discovery of three branches of government (which only Kant rightly understood as the decisive criterion of truly republican government and which only in the constitution of the American Republic found an adequate realization) lies a vision of political life in which power is completely separated from all connotations of violence. Montesquieu alone had a concept of power that lay absolutely outside of the traditional category of means and ends. The three branches of government represent for him the three main political activities of men: the making of laws, the executing of decisions, and the deciding judgment that must accompany both. Each of these activities engenders its own power. Power can be divided—between the branches of government as well as between federated states and between state and federal governments—because it is not *one* instrument to be applied to *one* goal. Its origins lie in the multiple capacities of men for action; these actions have no end as long as the body politic is alive; their immediate purposes are prescribed by the ever-changing circumstances of human and political life, which by themselves and because they occur within defined communities or given civilizations constitute a realm of public affairs arising between citizens as individuals, binding together or separating them as shared or conflicting interests. Interests in this context have no connotation of material needs or greeds, but constitute quite literally the *inter-esse*, that which is *between*

men. This in-between, common to all and therefore of concern to each, is the space in which political life takes place.

Montesquieu's discovery of both the divisible nature of power and the three branches of government sprang from his preoccupation with the phenomenon of action as the central data of the whole realm of politics. His own inquiries led him to make a distinction between the nature of government, "*ce qui le fait être tel*," and its principle, "*ce qui le fait agir*" (*L'Esprit des Lois*, Book iii, chap. 1). He defined the nature of government in only slightly changed terms—he neglects the form of aristocracy and states that a republic is constitutional government with sovereign power in the hands of the people, a monarchy a lawful government with sovereign power in the hands of one man, and tyranny a lawless rule where power is wielded by one man according to his arbitrary will. His more profound discovery is his insight that these "particular structures" need each a different "principle" to set them into motion, or in other words, that these structures in themselves are dead and do not correspond to the realities of political life and the experiences of acting men. As a principle of motion, Montesquieu introduced history and historical process into structures that—owing their existence to Greek thought—had originally been conceived as immobile. Or rather, prior to Montesquieu, the only possibility of change had been thought of as change for the worse, the change of perversion that could transform an aristocracy into an oligarchy, a democracy into an ochlocracy, or a monarchy into tyranny. There are of course many more possibilities of such perversions; it was, for instance, noted very early that majority rule also has a particular inclination to end in tyranny. Compared to Montesquieu's principle of action as the driving motor of change, all such perversions are of a physical, almost organic nature. Plato's famous prediction that even the best possible government could not last forever, and his accounting of its eventual doom through some inevitable mistakes in the choice of suitable parents for a desirable offspring, is only the most plausible example for a mentality that could conceive of change only in terms of ruin. Montesquieu, on the contrary, recognized motion as the very condition of history, precisely because he understood that action is the essential factor of

all political life. Action does not merely belong to governments, does not only show itself in the recorded deeds of nations, and is never exhausted in the process of ruling and being ruled: "*On juge mal des choses. Il y a souvent autant de politique employée pour obtenir un petit bénéfice que pour obtenir la papauté.*" (*De la Politique*" in *Mélanges inédites de Montesquieu*, 1892.) He recognizes with the tradition the permanent character of good government founded on lawfulness; but he sees this structure of laws only as the framework within which people move and act, as the stabilizing factor of something which by itself is alive and moving without necessarily developing into a prescribed direction of either doom or progress. He therefore does not only talk about the nature or essence, but also about the structure of government as that which in relative permanence harbors the changing circumstances and actions of mortal men.

Corresponding to his three chief forms of government, Montesquieu distinguishes three principles "which make a community act": these are virtue in a republic, honor in a monarchy, and fear in a tyranny. These principles are not the same as psychological motives. They are rather the criteria according to which all public actions are judged and which articulate the whole of political life. As such, they are the same for both governments and citizens, for rulers and subjects. If the principle of fear inspires all actions in a tyranny, this means that the tyrant acts because he fears his subjects and the oppressed because they fear the tyrant. Just as it is the pride of a subject in a monarchy to distinguish himself and be publicly honored, so it is the pride of the citizen in a republic not to be greater in public matters than his fellow-citizens, which is his "virtue." From this it does not follow that the citizens of a republic do not know what honor is, or that the subjects of a monarchy are not "virtuous," nor that all people have at all times to behave according to the rules of the government under which they happen to live. It only means that the sphere of public life is always determined by certain rules that are taken for granted by all who *act*, and that these rules are not the same for all forms of political bodies. If these rules are no longer valid, if the principles of action lose their authority so that no one any longer believes in virtue in a republic, or in honor in a monarchy, or if, in a tyranny,

the tyrant ceases to fear his subjects, or the subjects no longer fear their oppressor, then each of the forms of government comes to its end.

Beneath Montesquieu's unsystematic and sometimes even casual observations about the relationship between the nature of governments and their principles of action lies an even deeper insight into the essentials of unity in historically given civilizations. His "*esprit général*" is what unites the structure of government with its corresponding principle of action. As such, it later became the inspiring idea of the historical sciences as well as the philosophy of history. Herder's "spirit of the people" (*Volksgeist*) and Hegel's "world-spirit" (*Weltgeist*) show clear traces of this ancestry. Montesquieu's original discovery is less metaphysical than either of those, and perhaps more fruitful for the political sciences. Writing in the midst of the eighteenth century, he was still blissfully unaware of "world history," which one hundred years later—in Hegel's philosophy and also in the work of the leading historians—will have arrogated to itself the business of world judgment: "*Die Weltgeschichte ist das Weltgericht.*" His general unifying spirit is first of all a basic experience of men living and acting together, which expresses itself simultaneously in the laws of a country and in the actions of men living under this law. Virtue in this sense is based on "love of equality" and honor is based on "love of distinction." The laws of a republic are based on equality, and love of equality is the source from which the actions of its citizens spring; monarchical laws are based on distinction, so that love of distinctions inspires the public actions of the citizenry.

Both distinction and equality are basic experiences of all human communal life. We can say with equal validity that men are distinguished and different from each other by birth *and* that all men are "born equal" and are distinguished by social status only. Equality, insofar as it is a political experience—as distinguished from the equality before God, an infinitely superior being before whom all distinctions and differences become negligible—has always meant that, regardless of existing differences, everyone is of equal value because each one received by nature an equal amount of strength. The fundamental experience upon which republican laws are founded and from which the

actions of citizens spring is the experience of living together with, and being members of, a group of equally powerful men. Laws in a republic, therefore, are not laws of distinction but of restriction; they are designed to restrict the strength of each citizen so that room may be left for the strength of his fellow citizens. The common ground of republican law and action within it is the insight that human strength is not primarily limited by some superior power—God or nature—but by the power of *equals*, and the joy that springs from it. Virtue as love of equality springs from this experience of equality of power that alone guards men against the dread of loneliness. “One is one and all alone and ever more shall be so,” as the old English nursery rhyme dares to indicate to human minds what can only be the supreme tragedy of God.

Distinction, on which monarchies (and all hierarchical forms of government) are based, is no less an authentic and original political experience. Only through distinction can I become truly myself, this one, unique individual that never was before and never will be again. I can establish this uniqueness only by measuring myself against all others so that my role in public affairs will ultimately depend upon the extent to which I can win recognition from them. It is the great advantage of monarchical government that individuals, who have their social and political status according to the distinction they win within their respective walks of life, are never confronted with an undistinguished and undistinguishable mass of “all others,” against which the single man can summon up nothing but a desperate minority of one. It is the specific danger of governments based on equality that within the structure of lawfulness—in whose framework the equality of power receives its meaning, direction, and restriction—the powers of equals can cancel each other out until the exhaustion of impotence makes everyone ready to accept a tyrannical government. For good reasons, Montesquieu failed to indicate the common ground for the structure of lawlessness and fear as the principle of actions in tyrannies.

—*To be continued in the next issue of Social Research.*