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AGNES HELLER

THE COMPLEXITY OF JUSTICE – A CHALLENGE TO THE 21ST CENTURY

ABSTRACT. The author discusses two questions, the relation between liberalism and democracy, and the relation between ethics, morality and law. As to the first question, she argues that neither liberalism nor democracy are merely formal. Roughly spoken, it can be said that liberalism stands for negative liberties, whereas democracy stands for positive ones. She observes a non-contingent tension between the ethos of liberalism (personal freedom) and the ethos of democracy (equality; majority rule). It is the task of morality to maintain and restore the balance between these two kinds of ethos. As to the second question, she is worried about the balance between law (legal regulation), ethics, and morality. On the one hand, abolishing legal regulations would amount to abolishing the freedom of the moderns. On the other hand, the substitution of legal regulations for ethical regulations would lead to a similar result: the end of the freedom of the moderns through the homogenisation of life. In the former case, personal support, charity, magnanimity, and caring would get lost, while in the latter there would be no escape from community pressure towards uniformity.

KEY WORDS: democracy, democratic ethos, ethics, justice, liberalism, modernity, postmodern

1.

Since 1989 we are living in the 21st century. After the collapse of the so called “real” socialism in Europe, the political corroboration of the demise of the grand narrative, we find ourselves already at the other side of the divide; we look back at the most horrible century of modernity as if it were entirely past and gone, as if we had safely arrived to the other shore. This experience is sometimes called “postmodern.” Postmodern, in this interpretation, does not mean something that comes “after the modern” but rather something like “after having become conscious of being modern”.

The abandonment of the grand narrative is accompanied by a simple but momentous change in attitude. Men and women do not see the present as a transitory stage, as a kind of bridge that reaches towards another, yet not very distant shore, as they normally did from the mid-19th century onwards to the mid-20th century. Whether the now finally abandoned belief



was founded on the faith in the progress of science and of knowledge in general or on the faith in a final historical rupture and a this-worldly redemption, they had some features in common. It was believed that all the misery, terror and oppression that we encounter in our world, has resulted from the wrong solution of problems. The modern world appears as a bundle of problems. It is presupposed that all these problems can be solved, and can be satisfactorily solved, if one only finds the right method, discovers the blueprint of correct problem-solving, or unlocks the hitherto unknown riddle of history. Although even the believers in universal progression noticed that new miseries and forms of oppression constantly replace the old ones, but then could still explain this stubborn phenomenon, by referring to necessary detours, or just to accidental blunders and mistakes. When things went wrong, people normally assumed that this happened because the solution of the problems was sought on the wrong and not on the right track; the next track will, however, be the right one. The moderns living between the battle of Waterloo and the end of World War II or even 1989, particularly if they were educated in a version of the grand narrative or in a narrative following its footsteps, were always swinging between hope and despair, enthusiasm and melancholy.

We have just witnessed, between 1989 and the present, the latest European episode of this old story. It is quite typical that people, and particularly intellectuals, of the old communist countries fall into despair, in addition to other, and sometimes rational, reasons, also because they become disillusioned by the new political elite. They cannot fail to notice that the majority of this elite consists of power-hungry, competitive, and manipulative people. However, they expected (while still in opposition) that by removing the obstacles to democracy, new (democratic) politicians would come to the fore who will be patriotic, open minded, honest, self-sacrificing and the like.

The postmodern attitude is different. Postmoderns do not regard our present as a transitory period, but as the world of the absolute present historical tense. The future they are concerned with is the future of the present, not a future that transcends the present. This is why they at least tend not to regard our world as a problem, or as a bundle of problems, that will be solved if we find the good method or the best recipe. There is an increasing awareness of the complexity of modernity and of its brittle character. For example, contrary to many traditional theories that described totalitarianism as a premodern phenomenon, it became almost generally accepted that totalitarianism is deeply rooted in the modern social arrangement, as Hannah Arendt suggested forty years ago. It became accepted, although

not in so many words, yet practically, that modernity is the alternative social arrangement to the premodern, that it is different, yet not necessarily also worse or better than all those premodern arrangements, that there is no universal progression or regression. But the task is not to measure benefits and credits. We have reached a point – for different reasons that are not necessarily linked to one another – where the establishment of the modern social arrangement became irreversible. One cannot return to the premodern social arrangement without major social catastrophes. Moreover: modernity is no longer “Western”. As the human race developed in Africa, yet humankind as a whole has not remained “African”, high civilization was born in Asia, yet it has not remained “Asian”, so was modern civilization born in Europe, yet it is no more “European” or “Western”. We, in whichever culture we had the good or bad luck to be born, are all born basically modern. We cannot help it – this, as it is, is our world and this alone can we make more livable at least for those people that can benefit from our actions. One can act for the sake of others with responsibility, yet without pretending that our acts or our thought reach beyond our horizon. How would someone, for example, look at our contemporary democratic politicians from this, and a “postmodern” perspective? She would say, perhaps, that the expectation that a democratic political elite is, or will be, by definition morally and humanly superior to a premodern political elite, is simply wrong, for the opposite expectation would be more realistic. After all, in a premodern world, the able bodied and minded men of the upper stratum, rank, or estate, are born to play a political role in their country’s governance. They do not need to be excessively power hungry or competitive to get the opportunity to do what they are supposed to do, and they are expected to live up to the ethical standards of their own rank and estate absolutely, to maintain their honor. But in the modern world everyone is born free. There are, in principle, equal opportunities for all men and women to compete for leading political positions. Under such conditions selection and counter-selections will be tough. As a result, at least under average circumstances, it is more likely that ruthless, calculating, shrewd and power hungry people will get to the leading positions. Nobility does not belong to the main virtues of modernity, or of democracy. This is on average an essential feature of modern life and politics; it is not a problem that can be solved. Those who still prefer to believe that this is a problem to be solved, and that we can conjure up not just a handful of honorable democratic politicians, but also a deeply honest, pure, self-sacrificing, patriotic democratic political elite, will become fundamentalists, and helpless against totalitarian or populist demagoguery. All this, certainly,

does not mean that the democratic political elite should not be subjected to critical scrutiny from an ethical point of view. First of all: the members of a political elite should scrupulously honor and obey the laws of their country. But if they obey the laws, and if they do their business well, one can be satisfied – for chasing absolutes does more harm than good in the modern life, and particularly in politics.

The above-described attitude is not entirely new – in one form or another, it appeared repeatedly from the times of Enlightenment. Kant, for example, suggested that all we need to do is to establish institutions in the framework of which even the race of devils would behave decently. This idea is viable, although it is to be modified. Yet whether modified or not, to assume a skeptical position is not equivalent to the banal and primitive lamentation about the inchangeability of human nature. For the actors and the observers are not confronted here with human nature in general, but with the specifications of the modern social and political arrangement in particular. For example, law, ethics and morality became differentiated from one-another in modernity. This means that we cannot legislate for all the institutions where the so-called race of devils is forged. The attempt to regulate legally the fundamental human behavior in all institutions, and even in non-institutionalized interactions, is a dangerous expansion of the authority of the law, that simultaneously weakens the ethical power of its own authority. To this question I will soon return. How can then Kant's proposition still remain relevant, although in a limited or modified version?

2.

The greatest single invention in modern politics is the combination of liberalism and democracy. Neither liberalism nor democracy are merely formal. Both imply the acceptance of one substantive value. If in a country at a given time democracy and liberalism are kept somehow in balance (that is, if the probability of regaining this balance is maintained) and both democracy and liberalism remain true to their substantive values – without expanding them over the other's field – this country at this time has such political institutions in the framework of which politicians will behave, if not necessarily as decent persons but at least as decent politicians, they will perform their tasks, they will live up to their responsibilities, honor the laws, irrespective of their character and motivations. As we said, more is not to be expected. But this balance between liberalism and democracy is difficult to achieve, and even more difficult to maintain.

The combination of liberalism and democracy is in the sphere of political actions and decisions the sole most significant modern achievement. Originally liberalism and democracy had nothing to do with one another, and their combination cannot result in their fusion. It can be compared with a good marriage that is, nevertheless, constantly threatened by the possibility of divorce. The tensions and the conflicts between these two aspects of modern liberal democracies have gathered momentum and assumed an eminent political importance during the short time that has elapsed after the disappearance of totalitarian regimes from Europe, and their obvious decay in other places. In all probability, several variants of this conflict will dominate the political contests in the early 21st century that is in the future of our present.

The traditional distinction between liberalism and democracy, namely that liberalism stands for negative liberties, whereas democracy for positive ones, lacks precision. It would be more accurate to say that personal freedom is the central value of liberalism whereas political equality is the central value of democracy. In fact, liberalism recognizes the validity of all values that can be interpreted as liberties, whereas democracy stands for the equality of those liberties. Yet, democracy has an inbuilt tendency to push towards such forms of equality that are more substantive than formal, for example, equality of incomes, or the assumption that all persons *qua* persons are equal; yet the same democracy and at the same time has no second thoughts about excluding whole groups of people from the community of the very people or nation, whose members have a right to equal liberties. Since majority decision is the principle of just decision in a democracy unless liberal principles will also be upheld, democracy will always develop in the direction of more and more substantive regulations. For example, it will increase the tendency to cut the heads of tall poppies, that is to destroy a cultural elite if there exists one, or to prevent its emergence if it does not yet exist, it will prevent immigration and excludes different kinds of minorities from the body of the people or nation. If it were a matter put up for referendum (one of the pure democratic decision making processes) no country would ever grant asylum or immigration rights for more than a handful of persons.

Equality is not only the idea of democracy, but also its ethos. Wherever there is democracy, we encounter this ethos, particularly in the USA, the only country of a longstanding democratic tradition. The democratic ethos willingly acknowledges that there are modern institutions – be they economic, political or educational – that are hierarchically structured. Within such institutions, there is no democracy, no equality, thus here the idea of

justice is not “to each the same” but “to each according to their work or to their accomplishment.” Yet, at the same time and paradoxically, the spirit (ethos) of democracy suggests that whatever position someone may occupy on the ladder of social hierarchy and income, none of them is a better or a cleverer or a more deserving person than the other. It is one of the central creeds of recent American political theory that personal qualities and talents that had been won on the so-called natural lottery do not deserve special acknowledgment or preference: this view is a naive and therefore also straightforward expression of resentment. A blessing cannot be quantified; two outstanding talents cannot be compared – yet the democratic ethos cannot deal with uniqueness. Resentment is not a psychological phenomenon, nor is it a general human vice such as envy, but one of the intrinsic features of the spirit of democracy.

The second major constituent of the democratic ethos is the creed that the majority is always right. The fact that in the USA people so easily accept the judgment of a majority, be it expressed in the political arena, in the workplace, in a jury of the court, or before the TV, cannot be explained just by fear or by indifference. What was once termed conformism and assessed negatively by the European observers is not considered there as weakness but as virtue, the virtue to recognize that the majority has the moral power to judge better and to know better, than the minority or the single individual.

At the same time that democracy has developed, particularly in the USA, its inbuilt tendency towards becoming more substantive, liberalism has moved slowly into the opposite direction. Originally, liberalism has placed the emphasis on the value of personal freedom – it did not acknowledge any institution as free unless personal freedom was also warranted. The formal principles of the liberal creed were mostly of limiting character (e.g. one can expand one’s own freedom with the sole condition that one does not limit the freedom of others.) Liberalism has also its own ethos, but unlike that of democracy it is not a group ethos, for the liberal ethos (in attitude, motivation, action) is attributable to a shared conviction. The main ethical norms of the liberal creed is independent (free) thinking, the Kantian *Selbstdenken* – our obligation to think with our own mind – further, the virtue of toleration and finally, that the respect to the person and his/her personal dignity.

The kind of liberal ethos that once emerged in not-yet democratic societies, particularly in Britain and in Western Europe, gained the status of a universal (that is, of a conviction and an attitude that transcends in its validity claim all status and estate boundaries) in the times of the Enlighten-

ment. The enemies of the liberal creed were originally the Church and the State, that is, the conservative, and still estate-bound powers. Think with your own mind meant there and then not to subject your opinion and judgment to the king, the priest, and the aristocracy. In the United States, however, the same personal creed of liberalism has collided mainly with the democratic ethos of (civil) society. One cannot share at the same time the ethos that one should think with one's own mind alone, and the ethos that the majority is always in the right simultaneously, without perceiving the tension or the conflict between them.

The greatest historical achievement of the liberal ethos was the institutionalization of the rights of men and citizens. Actually, not just the rights of men but also those of citizens are substantially limiting the scope of democracy. Constitutionally guaranteed liberties established already a balance against a too substantive and totalitarian development of democracy. Interestingly, it was still the further substantive expansion of the territory of "rights" that opened the way towards the increasing formalization of liberalism. The inclusion of the so-called socio-economic rights into the list of rights (in the Universal Declaration of the United Nations as in several other documents), began to discredit the very notion of rights.

Rights were declared to many substantive matters, such as education, wealth, and medical service, which are, as all substantive matters, context-dependent. Rights, given their formal universality, must be thought as context-independent; this is, among others, what distinguishes them from privileges. In case of rights as liberties, it is the individual who claims a universal right in a concrete context. Through expanding rights into the grey area of context dependent legislation, liberalism became the mouthpiece of democracy, but only *de iure*, that is, on a piece of paper – because the only thing one can do with context-dependent right in the absence of an adequate context is to declare them. Maybe this was a political exigency, a world-organization is not democratic, it can at most make democratic recommendations. But for whatever reasons it happened, rational or non-rational, the expansion of the concept of rights has formalized the concept itself. This meant that there were rights to be acknowledged that were not rooted in the substantive ethos of liberalism. The rest followed.

The second way to formalize rights is to warrant rights without obligations. In the United States (perhaps because of the puritan tradition that originated rights from God with the hindsight that it is only God to whom duties are due), perhaps because democratic institutions were already at place in society and not just in the state, as in Europe, and in all probability because of both, rights were not thoroughly and necessarily linked to

obligations. But a right without an obligation is a right that lacks the liberal ethos entirely. The receiver's side does not require an ethos at all, whereas the giver's side (in the puritan tradition the love of God) cannot be an obligation for a liberal mind. The ethos that includes the conviction that whatever I claim for my group as my (our) right, can also (legitimately) be claimed by other groups of persons as their rights, makes no sense if duties are no more attached to rights. But many of the contemporary American liberals (e.g. Jacobson, 1991) dismiss the ethos of reciprocity. This is so particularly in the cases where the legitimate problem of straightening out past injustices is on the agenda. The first step taken into the direction to institutionalize new rights (without obligations) has opened a flood of claims to rights, and most of them are granted. Finally, rights became means for warranting privileges for groups (mainly of a common ethnic or racial origin, of religion, of a particular way of life or of a gender) provided that they were loud enough to claim them, and strong enough to make their representatives implement them. In the above interpretation and practice the concept of rights has entirely lost its liberal character.

The last, and very usual way to formalize liberalism entirely is proceduralism. If one speaks of a liberal procedure within a particular context one cannot be wholly proceduralist, for one must pinpoint at a few substantive principles the priority of which must be warranted. This is the procedure suggested by Rawls. But if we are left without a normative arche, every content could be justified. This is exactly what is happening now. Although mere proceduralism was recommended first by universalists, cultural relativists now practice the method. Since e.g. one would normally agree that every culture is to be recognized, liberals now conclude from this that every culture must equally be respected, and that they are all of equal value or worth. Charles Taylor rightly said that the first assertion should be accepted without the second and the third believed to be right (Taylor 1992). But there are as good arguments for the acceptance of assertions two and three as for the acceptance of assertion one—because right or wrong in those matters does not depend on formal skills of argumentation, but on the substantive values that one resorted to. One can prove and justify, if one has the good skills, practically everything. If there is female circumcision in one group, so what? One culture is as good as the other. And what if women like having it done to them? And what if the traditional custom of female infanticide is practised? This is their tradition, not ours. We are ethnocentric bastards if we believe that our values are superior—just see, are we happier than they? If only EXIT is possible, oppressive cultures, which can give people “a lot”, one should not discriminate

against oppressive cultures (Raz, 1994). The old liberal ethos (that still has some following) could retort to all these sophistries with the Voltairian voice of outcry “Ecrasez l’infame!”

3.

In the only traditional democracy, with the sole exception of Switzerland, America, the pendulum of modernity now swings forcefully, and not for the first time, in the direction of substantialization of democracy and the formalization of liberalism. In Europe this is the case. But this time I do not want to contrast the European and the American tradition, and do not warn Europeans, as usual, against taking over the American model without thinking first with their own mind – this time I would like to ask another question. Provided that in the balance of democracy and liberalism the pendulum of modernity swings too much in one extreme direction, where are the powers that may be able to push the pendulum back so that liberalism and democracy may come again into a momentary balance? Or rather, which are those powers? Since we are speaking about the presence or absence of a democratic and a liberal ethos, the powers we have in mind must be of an ethical kind. In Hegel’s spirit we can distinguish three powers that are partially or entirely of an ethical kind: the power of the law, of the ethical life (termed by Hegel *Sittlichkeit*) and of morality. I would like to think over together the following issues: What is the situation of justice in case of collision between liberalism and democracy? Is there a possibility of maintaining dynamic justice without the strong presence of both ethical life and of morality? Can law (legislation) on its own maintain the idea of justice and guide human practices without the strong backing of ethical life and of morality? Are these latter powers still present in the contemporary world or are they in the wake of disappearance? Before beginning to think about these momentous matters, I make two brief remarks. Although I discussed briefly the tendency towards the formalization of liberalism and the substantialization of democracy, because this is happening in the USA just now, the opposite tendency in losing the balance (the formalization of democracy, the substantialization of liberalism has once been the typical European case. Then, the loss of balance has resulted (among others) in the destabilization of democracies and the emergence of totalitarian regimes. The works of Carl Schmitt, for example, manifest this tendency clearly.

Since nothing can be excluded from politics for good, the past can also be repeated, even if not in exactly the same manner. Without denying the

danger of such eventuality, I will not present now an overall picture of the major dangers, and will not look into every possibility. I will do the very thing which a postmodern critical theory, in my mind, is supposed to do – namely to do the cobbler's job and to find out where the shoe presses *now*. And not where it has pressed yesterday, or where it will, perhaps, turn out to be too tight, tomorrow. If tomorrow the situation will change, postmodern critical theories will point at another danger; they are not conceived *sub specie aeternitatis*.

My second remark concerns the localization of the conflicts. A kind of conflict between liberal and democratic principles can take place in all the three spheres of modern society (the intimate, the private and the political). For example, in the family, there is a conflict between permissive education and the principle of participation, as also a conflict between toleration of personal idiosyncrasies on the one hand, and an obligatory flat egalitarianism, on the other. Yet given the imbalances of different provenance in those three spheres, and because of the entirely different character of the three spheres, the balance between law (legal regulation), ethics, and morality need to be different in each of them.

The utopian version of the grand narrative conjured up a future, where, as Lukacs once wrote, ethics will take the place of law. Post-grand-narrative thinkers, e.g. Habermas, discover in the present and the foreseeable future a tendency to the opposite. Among the virtues, so the verdict goes, only justice remains, and due to the institutional complexity of modernity, law, and legal regulation in general, must expand into territories that had been once regulated by ethics.

I cannot agree with Lukacs' ideal, although I do not think that his prediction is more absurd than the opposite prediction I rather believe that a world where ethics occupies all the places that had been formerly regulated by law, would signalize the absolute victory of fundamentalism, the loss of diversity, or, at least, the final breakdown of communication among the different cultures. The Lukacsian idea originates in the Hegelian view that law as everything that is merely formal is alienated, whereas ethics is not, for ethics is embedded in life; it is a power of life. But Hegel confirmed the plurality and complexity of modern life and the necessity of the law. The abolishment of legal regulation (whether possible or not is not the question) is also the abolishment of the freedom of the moderns.

I cannot agree with the opposite view either – namely with the substitution of legal regulations for ethical regulations, although the observation that such a tendency exists, might be correct. If such a tendency goes on unabated the result might be very similar to the dynamics of its oppo-

site: the end of the freedom of the moderns through the homogenization of life. One could object to this that law does not regulate attitudes, only acts. This is, however, questionable even on the level (or in the sphere) that had been once termed by Hegel 'civil society'. Look at tax-laws for example. One cannot have effective tax-laws without some willingness of the population to pay taxes, if even grudgingly. But when the legal regulation, or rules simulating legal regulations, become extremely dense in civil society, the power of ethical solidarities supporting legal regulations diminishes, and personal relationships become depersonalized. One true story will illuminate this point. It happened in Sweden, about ten years ago. An older man suffered a heart attack; his son drove him to the hospital, and went immediately afterwards to the social security office to claim back the price of the gas he has spent *en route*. This story tells us, among others, what kind of an attitude is assumed if everything is taken care of by legal, or legally backed, institutions. The new attitude is the attitude of the "cold heart". Law takes care of everything, personal support, charity, magnanimity, magnificence, liberality, caring becomes obsolete, whereas if law is "withering" there is no escape from community pressure towards uniformity sod from the soul police. I would add, that under the conditions of increasing formalizations of liberalism and substantialization of democracy, also the over legalization of society can be supported and reinforced by community pressure. This is always so, when lobbies or communities insist that law should interfere with intimate life, among others with the life of the family. The most representative expansion of the law in the last decades can be observed in the intimate sphere. When law penetrates the intimate sphere, the legalization of ethical life follows.

The intrusion of legal or semi-legal regulation into the world of intimate relationships, can be seen as a reaction on the decay of traditional customs, the weakening of religious communities, and to increase of mobility, the loss of home. New ethical customs (if such are needed) must be legitimated by something else but tradition – and the easiest and most viable way is to legitimate them by law. Ethical customs also take legal forms, and behave as if they were legal; institutions forge their own lists of prohibitions. This means mainly (although not exclusively) that the ethical becomes tantamount to the distinction between the permitted and the not permitted. The reduction of ethics to the distinction between permitted/not permitted results in the withering the *form* of the (old) customs, their ceremonial aspect, and their beauty. The permitted/not permitted distinction may orient in matters of correctness/incorrectness, but does not allow for the refinement of attitudes, politeness, courtesy, tact, personal touch –

nothing that even remotely reminds us of the beauty of personal relations, close or remote. We are not refraining from lightening a cigarette because, for example, someone in our company is allergic and we care for her well-being, but because the law prohibits it. The legal over-determination, the regulation-ethics transforms ethics itself into a bundle of rules, where all nuances are gone, where there is no grey sphere, no interpretation, no reflective judgment, no beautiful or ugly characters, no fine tuning only people who know the rules and follow them in order to avoid being sanctioned. The best examples of this are the current American rules against sexual harassment. Where such rules become normal, men do not need to develop an honest, decent, ethical behavior towards women, and for women no difference, no personal interpretation, no context, no ipseity will matter – the beauty of human play and folly is lost. Everything is just simple and straightforward – one knows the rules. And in addition to the simplification and the primitively empty formalization of human relations, the legal or semi-legal regulations of the ethical territory inflict fear – the fear of sanction.

Thus legal regulations, and the simulacra of legal regulations that replace the power of the ethical, deeply intrude into intimate life. This is however a real paradox. Where law intrudes, there is no intimate life. I would not deny that there are reasons why the issues of intimate life are subjected to public scrutiny. To use an old phrase: “everything that belongs to the dark of the night is brought then to the light of the day”. Yes, the darkness covers up for many misdeeds, and is also the hotbed of cruelty and suffering. But let us be cautious, so is, at least in matters of intimate life, the light of the day. Humiliation in public is as bad as humiliation in private, it is not the compensation for the former. It is true that ethics, the power of the ethical, cannot entirely redress injustice in this field. But love is gone, trust is gone, faith is gone. It is questionable what is more worth, whether the gains make up for the losses. It is true, that it is a bad thing when a father in his anger boxes his son on the ear. Yet it is also true that it is a bad thing when the ten-year-old victim of the box on the ear hires lawyers to sue his father for child abuse and claims many million dollars (from his father) as compensation. Which one would you choose? I on my part would choose the neighbor or the friend, who advises the father that he should, next time, control his rage. One could object that there are no longer such friends and neighbors. The intervention of friends and neighbors draws its legitimacy mostly from ethics, and if the ethical powers lose force, they will no more carry ethical authority. But what about moral authority?

Moral authority is not legitimated by customs, for it is backed by the goodness of the person who speaks. There are decent, good, persons; there is moral authority. A person is decent (or good) if he or she rather suffers injustice (wrong), than commits injustice (wrong). Socrates' bold statement that it is better to suffer than to commit injustice cannot be proven. Since for the good person the sentence is true, for the bad person it is untrue.

Neither the democratic ethos, nor the liberal ethos can explain why someone should be a decent, a good, a moral person, although both will insist that one must accept their ethical recipes in order to do the right thing. However, morality has an ontological priority to ethics and law. For one has to be a decent person first to ask the question: what is the right thing for me to do? Ethics answers this question, whereas law mainly tells you what you should avoid. Needless to say morality also has an ontological priority to all religions and philosophies. One can draw the strength for being (becoming) good from various sources – among them from moral philosophies, religions, or from the democratic and the liberal ethos – but what matters most, or rather what alone matters is *for what purpose* one is drawing one's strength.

Thus the decent person is the one for whom it is better to suffer injustice than to commit it. This is why he/she asks the question: what is the right thing for me to do here and now vis-à-vis these people in this context? While embarking on an action or series of actions, by making a commitment, men and women of morality take responsibility for the world – they also take a moral risk. This is why they consult a variety of ethical powers, without letting themselves be determined by any of those powers. To return to our question: morality is determined neither by the ethos of liberalism or of democracy, nor by ethics or by law. It can use them as crutches, yet it can also query their content and form, their validity.

This is why and how morality takes care (or, at least, can take care) of the restoration of the balance between the ethos of liberalism and of democracy, in times when the pendulum swings too extremely into one or the other direction. Justice in this most general sense is the *condition* of doing justice. To keep the democratic and the liberal ethos in balance is justice in this sense. For whether the pendulum swings in the direction of on one extreme or into the other – personal freedom is always curtailed.

The protection of personal freedom is intrinsic to the attitude of morality, since it is its own life-element, it is built into its very structure. It is also the subjective condition of dynamic justice. Morality will always devalue the actual main source of social and political oppression.

A decent way of life is an end in itself and it is beyond justice. It is still the matter of virtue and of moral wisdom, of love and of refinement, of beauty and of tenderness, of confidence, friendship and of faith, where the *absolutes* still have their legitimate place. But we speak here about justice, that is about morality as the vehicle to restore the balance of ethical powers, as a political exigency, that remotely resembles Aristotle's first definition of justice as "the sum total of virtues in relation to other men."

Let us return then to the question of ethical powers. A power can be called ethical if it guides value-rational actions. An ethical power renders – to an extent – meaning to one's life (one's everyday life included), as it requires also emotional involvement and sacrifices. One is emotionally involved in the reinforcement of such ethical power to offer willingly and deliberately certain small or momentous sacrifices. Not a very long time ago the family yielded such an ethical power, but the family's ethical power (together with the ethical, albeit not also the emotional, power of love) is in a state of disappearance. The nation state's ethical power is also diminished (with the exception of the state of war), so is the ethical power of civil society, as the society of burghers. One could say that other (and perhaps even more forceful) ethical powers took the vacated places, and that one of the traditional ethical powers of modernity – the power of the law – has reserved its vigor. But here one should be cautious. The ethical power of the law is a borrowed power. One does not sacrifice oneself for the law, and one does not render meaning to one's life by the law, unless the law stands for one or the other ethical powers – for example, many brave judges of Columbia sacrificed their life in the battle against the Mafioso of the drug-trade. In this case morality has backed both the liberal and the democratic ethos that took up the case of the rule of law against corruption, murder, and blackmail.

In the modern world the ethical power of the law always results from the power of the liberal ethos or from the power of the democratic ethos, and mostly from both. If the democratic ethos is substantive, the law follows the change of the ethos very fast. In the United States we saw in this century prohibition laws, the legalization of the Anti-America Committee, anti-smoking laws, the legalization of speech codes and, unlike most European states, there are no laws to protect privacy. If the liberal ethos is more substantive the single individual is more protected against the change of moods of the crowd or the lobbies, but public opinion yields less power.

4.

The classic phenomenology of modernity from a modern point of view is Hegel's interpretation of the modern ethical powers in his *Philosophy of Right*. Let me repeat: there are three major powers among them: state, society and the family, that is, the political, the social, and the communal powers. There is – according to this model – one single overall arching ethos (that of the state). Morality is the individual's relation to this totality, it is embedded in it, but it does not change it. The model that I now suggest is different. I propose to think the ethical powers of modernity from a postmodern viewpoint. There is no one over-arching ethical power here, but two, conflicting and also collaborating powers (the liberal and the democratic ethos). They infiltrate the power of the law and all the societal powers – be they the power of a nation, of a self-declared race, of science (as long as it is an ethical power at all), of a gender, of an ethnic group, an old or a new religion, a culture, a lobby, a mafia or else. There are many mini-powers that participate in the game of liberal and democratic ethos, and many of them harbors tyranny. The game has several variations and not just a few of them endanger the survival of modernity.

Morality is possible in this world, but it cannot establish itself comfortably in the totality of *Sittlichkeit*. Kant knew that in this world morality is a major political power. To think with our own mind was always difficult, and so it remains. It is more difficult because the crutches for the decent men and women must be found or at least confirmed by the decent women and men themselves. And it is also easier for the same reason – one has the choice among many crutches. As far as morality is concerned, contingency is both a plus and a minus. This is a draw. There are no gains without losses. But there can be more attractive gains and more devastating losses. The cracks that one can observe between the general state of the world, the situations, the actions and the characters, show also that the ethical powers of modernity do not fit with one another.

Thus we return to the starting point. Whether the law should interfere to a greater or lesser extent into the life of all the bigger or smaller chunks of the major moral powers, is an unanswerable question. For there are many answers, depending on times and occasions, on the questions raised, on the persons who raise the question. E.g. one can make a case for the extension of the power of law in one aspect and for the substitution of ethics for the law in the other. The most important thing is that no general answer to the above question should be given. *It is the irony of morality that there must be no last word. No truth and no prediction in this matter.* This irony requires courage – it is the Socratic courage after the fall of metaphysics.

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