

Danny Michelsen: Kritischer Republikanismus und die Paradoxa konstitutioneller Demokratie. Politische Freiheit nach Hannah Arendt und Sheldon Wolin. Springer VS: Wiesbaden 2019.

Translation: Critical Republicanism and the Paradoxes of Constitutional Democracy. The Meaning of Freedom in Hannah Arendt's and Sheldon Wolin's Political Thought.

Table of Contents

1. Introduction

1.1 Topic and Research Questions

1.2 State of Research

1.3 Structure of the Study and Course of Argument

I. Part: The Critical Republicanism of Hannah Arendt and Sheldon Wolin

2. Political Freedom in the Age of „the Rule by Nobody“

2.1 Freedom from Sovereign Rule

2.2 Freedom and Democracy

2.3 Freedom as Non-Domination

2.4 Freedom as the Capability to „Begin Anew“ (and its Destruction by the Power of the „Social“)

2.5 Freedom and Equality

3. The Autonomy of the Political

3.1 The „Socialisation“ of the Political in Modern Times

3.2 Power, Domination and the „Political Difference“

3.3 The Politics of Judgment

4. The Law of the Republic

4.1 The Critique of Liberal Constitutionalism

4.2 The Fair Value of the Right to Participate as the Purpose of Republican Politics

4.3 The Dangers of Bureaucratization

4.4 Democracy and Human Rights

5. The Ethos of Democracy

5.1 The Limits of Pluralism: In Search of a Democratic „Commonality“

5.2 *E pluribus unum*: Democracy and the Vertical Balance of Power

5.3 The „Transgressive“ Logic of Democracy and the Importance of Limits for the Space of Politics

5.4 Wolin's concept of *fugitive democracy* and its Problems

5.5 The Dangers of an „Emancipatory Apriorism“

5.6 Democracy and Representation

5.7 Is Populism „the culture of democracy“?

II. Part: The Tensions between Democracy and Constitutionalism

6. Is There Such a Thing as „Democratic Constitutionalism“?

6.1. Arendt's und Wolin's Critique of „Negative“ Constitutionalism

6.2 The Ambivalent Enabling Dimension of Constitutional *Precommitments*

6.3 The Paradoxes of Constitutional Democracy

6.4 „Laissez-faire Constitutionalism“?

7. Parliamentary or Constitutional Sovereignty?

7.1 Wolin's Plea for Parliamentary Supremacy

7.2 Arendt: The Constitution as „Sanctuary“

8. The Problem of Founding and of the Conservation of Constituent Power

8.1 The Aporia of Founding and the Problem of Sovereignty

8.2 The Continuation of the Founding Process in the Constitutional Order

9. The Tensions between Democracy and Judicial Review

9.1 Legalistic or „Political Constitutionalism“? On the Legitimacy of Judicial Review

9.2 Are There Alternatives to *Judicial Supremacy*?

10. Problems of Constitutional Interpretation

10.1 The Constitution's Openness for Interpretation and its Problems

10.2 The Balancing of Basic Rights

11. Summary and Outlook

Abstract

The dissertation reconstructs the theoretical foundations of a critical republicanism on the basis of a comparison of Hannah Arendt's and Sheldon Wolin's political thought – especially their understanding of political freedom. A particular focus of the comparison is set on the relationship between politics and law, between democracy and constitutionalism, in Arendt's and Wolin's work. Republican thought ambivalent with regard to the evaluation of the relationship between politics and law, especially in view of the juridification of politics, as frequently described in literature, and the associated danger of the emergence of a "constitutionalism without democracy" (Hauke Brunkhorst). Therefore, one of the guiding questions of this thesis is to what extent republican thought – which, in contrast to liberalism, emphasizes the idea of the autonomy of the political – can open up perspectives for a more democratic shaping of processes of legalization.

The study argues that Arendt and Wolin start from an ideal of freedom as non-domination, which, however, in contrast to other republican models (like Philip Pettit's), is constitutively connected with a "strong" understanding of democracy that is founded on the right to participation and the "right to dissent" as basic norms of all legal claims. Arendt and Wolin start from the assumption that the ideal of non-domination can only be realized under the precondition that we are free to act collectively, to "start anew", to challenge existing rules, and to replace them with new rules. For Arendt and Wolin, however, the ideal of a "democracy against domination" (K. Sabeel Rahman) leads to different conclusions, each of them being deficient in their own way: Since Arendt excludes all relations of domination from the political sphere, she tends to regard social struggles and the challenge of *dominium* (i.e. the possibility of arbitrary exercise of power in the economic sector) as apolitical. In contrast, Wolin regards the contestation of *dominium* itself as the essential moment of democracy, but since he suggests that the freedom of spontaneous action is in conflict with the formation of power hierarchies and the professionalization of politics, he concludes that democracy can only be realized in fleeting moments. Thus, he ends up with an anti-institutionalist understanding of the political. Arendt avoids such a view by making an effort to reconcile the principle of „starting anew“ and the spontaneity of acting with the principle of the durability of institutions. Her ideas for the revitalization of the council system as an alternative to the representative systems of the present age and her concern for the stability of the *rule of law* – which, in her view, is in conflict with the instability of democracy – are an expression of this effort. In contrast, Wolin argues that legalization processes could themselves become a source of domination. While Wolin focuses on a relatively one-sided critique of this democracy-restricting dimension of constitutionalism – concluding that democracy and constitutionalism might be actually incompatible –, Arendt rightly points out that the enabling effect of constitutional law cannot be separated from its constraining force. For this reason, Arendt regards a constitution that strongly restricts the right of the people (and their elected representatives) to change the constitution – an attribute that is criticized by Wolin as antidemocratic per se – as the best protection against the occupation of the law's authority by political power.