

Adjudication and the public realm An analysis based on the work of Hannah Arendt

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Abstract

In this article, the possible tension between adjudication, understood as a public service, on the one hand, and the inevitable tendencies in a modern democracy towards the rationalization and personalization of this service, on the other, will be analysed. It will be shown that these tendencies in themselves do not have to be problematic, but that some particular manifestations thereof indeed are. To understand why this is the case, we need a thorough understanding of the public character of adjudication and its significance for society as a whole. It will be shown that the notion of the public realm, as elaborated by Hannah Arendt, gives us an interesting and important starting point for such an understanding. While her thinking provides strong foundations for modern democracy, it also provides a footing for a critical analysis of the rationalization and personalization of modern society. The insights of Arendt will be used to understand and critically assess recent developments in law and adjudication. Not only will we discover the crucial part which the judiciary plays in a democratic society, but also that to be able to play this part some limits of rationalization and personalization must be respected. First, the notion of the public realm will be elaborated. Next, it will be explained why law and adjudication can be understood as prerequisites of this public realm. After that, the phenomena of rationalization and personalization in modern society will be analysed. It will be explained how these phenomena can disintegrate the public realm, and also how they affect law and adjudication. At the end a positive account of law and adjudication as the backbone of the public realm will be given, in describing their place in the public realm 'middle' between a rational and a personal approach.

Keywords

adjudication, judicial administration, public realm, personalization, rationalization, ADR, Hannah Arendt

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