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Natural Rights: Are They Protected or Restricted by Democracy?

Which is more important: safety or freedom? How do we determine the government's role in protecting either? These questions have plagued people, politicians and otherwise, since at least the 4th century. While I can't answer either of these questions definitively, I will present the reasoning for my stance on these matters. First, safety is more important than freedom, but not absolutely. Second, democracy as a system is one of the better forms of government for delineating the duty of the government when it comes to protecting personal freedoms and public safety.

When discussing the freedoms people have, it is necessary to define the different types. Scholars such as Hansen, though he was far from the first, have defined freedoms as positive and negative freedoms. "Negative freedom," Hansen tells us, "is freedom from oppression by the state or other individual" (174). Positive freedom is slightly more complicated, but politically speaking is defined as the entitlement of a person to participate in collective decision-making. After defining these terms, Hansen explains, "the negative and the positive aspects of freedom are essentially opposed" (174). If a government wants its citizens to live lives conducive to governing and being governed, as a democracy must, positive and negative freedoms have to remain balanced. If the negative aspect of personal

freedoms is overemphasized, citizens would not consent to be governed, based on the belief that there should be little to no external constraint on their decision-making. If the positive aspect is unduly amplified, citizens become too individualistic and would no longer be willing to compromise—even if it was in the best interest of their communities.

These freedoms are both restricted and protected by the government; in a democratic system, these decisions are partially based on the will of the people, which is communicated to legislators through elected representatives. According to Aristotle, "...democracy and *demos* in their truest form are based upon the recognized principle of democratic justice, that all should count equally" (137a40-1318a10). Unfortunately, in a representative democracy such as the United States, everyone is not counted equally. There are a myriad of obstacles that stymie civic participation. These include—but are not limited to—a lack of reasonable access to voting sites or voting information, an inability to take time off of work to vote (sometimes due to financial constraints), or disenfranchisement as punishment for a crime. Morris posits the idea that "democracy is not something that a community either has or does not have: it consists of bundles of attitudes and institutions" (63). Additionally, Ostwald argues, "No act of [a man] can make him an active member of the community: the degree to which he is a citizen is not determined by himself, but by the expectations of the community of which he is a part, in terms of the contribution he can make to its functioning" (166). If we accept these two statements as true, then democratic systems that prevent citizens from exercising their political agency, whether actively or inactively, have not only restricted the ability of citizens to use the positive freedoms they ought to be protecting, but also removed people from the citizen body unlawfully. When governments begin to overly restrict freedoms, it is only a matter of time before the people reassert their right to personal freedoms.

The problem of what to do when faced with people who refuse to have any more of their personal freedom impinged upon is as old as governments themselves. In the late 5th century BCE, Thucydides recorded the Mytilenean Debate. While it is true that the Athenians are debating a course of action in response to allies who revolted and not in response to citizens, the strength of the Athenian empire likely left the Mytileneans feeling as though they had little choice when it came to making their voices heard, much like frustrated citizens might. Thucydides preserved the arguments of Cleon and Diotodus in the Mytilenean Debate while they persuaded the Assembly to either put all the Mytilenean men to death as punishment for rebelling against Athens or inflict a milder punishment. Both speakers acknowledge the disrespect that this rebellion signaled, but argue over the correct punishment to inflict. While Diotodus argues that the men should not be put to death, Cleon presents his reasoning in favor of the arguably draconian punishment the Assembly had initially agreed on. Cleon says, "If you inflict the same punishment on those who rebel under compulsion by the enemy, as on those who rebel of their own accord, don't you think anyone would use the slightest pretext to rebel, for if they succeed they will win their liberty, but if they fail they will suffer nothing that can't be mended?" (*iii.39*). Not only does Cleon disagree with how the Athenian Assembly is attempting to deal with the rebellion, but he also chastises them for how they have handled it in the past. He says, "long ago we should have given the Mytileneans no more privileges than our other allies, and then they would not have come to this degree of insolence, for generally it is human nature to look with contempt on those who serve your interests, and to admire those who never give in to you" (*iii.39*). In his mind, Athens is foolishly attempting to rule an empire with democracy. Although the United States is not technically an empire, similar mindsets present themselves over the course of our history. From the early days of the country through the present, politicians and government officials have not needed even the pretense of a rebellion to crack down on those who pose a perceived threat to our democracy. Cleon goes a step

further by suggesting that if Athens is not willing to rule with the firmness required by an empire, they ought not to have one. He claims that "... if they were right to rebel, you ought not to have been their rulers. But then suppose your empire is not justified: if you resolve to hold it anyway, then you must give these people an unreasonable punishment for the benefit of the empire, or else stop having an empire so that you can give charity without taking any risks" (*iii.40*). In democracies that approach the limits of their efficacy, such as democracies built to handle a much smaller population in a much smaller territory wading into unknown waters with little to no intention of changing the systems currently in place, disproportionate restrictions come to pass in a bid to hold on to the power that a government has grown accustomed to wielding.

There is almost nothing more challenging for a government than to decide which liberties to restrict and how. The liberties a person is willing to trade for public safety vary greatly from individual to individual based on moral and ethical codes that are rarely consistent and never straightforward. What democratic governments find easier is punishing people who have crossed lines in the sand that the majority have agreed to respect. Thucydides addresses the futility of trying to prevent lawbreaking by saying:

They have it all by nature to do wrong, both men and cities, and there is no law that will prevent it. People have gone through all possible penalties, adding to them in the hope that fewer crimes will then be done to them by evildoers. It stands to reason that there were milder punishments in the old days, even for the most heinous crimes; but the laws continued to be violated, and in time most cities arrived at the death penalty. And still, the laws are violated. (*iii.45*)

As mentioned earlier, one of the ways the United States punishes those who break laws is to remove their right to vote following release from prison. Not only does this affect the individual who has been arrested, but it also affects the family and community of the incarcerated person. Green says, "As the

legal impediments standing in the way of participatory democracy wane, so-called *de facto* structures rise in prominence as obstacles restricting the emergence of a vibrant egalitarian political culture. These include gross inequality and material destitution, the lingering effects of prejudice and discrimination in societies just recently liberated from institutionalized racism, and educational deficits which leave large segments of the populace ill-prepared to actualize an otherwise available civic potential” (745). The modern United States’s democracy relies on the participation of its citizens but thrives when only a certain subset of the population can actualize the right to vote.

Although legislation has passed that removes legal barriers to voting, Green astutely points out that this does little to remove the other, subtler limitations of people’s positive freedoms. This is an example of unjust limitations on people’s rights; the restriction of rights is not inherently immoral because without certain restrictions governments could not function. In many cases, the justification for the restriction of rights is the well-being of other people who live in a given society. Absolute freedom and absolute safety are diametrically opposed, but the compromise between the two is what allows governments to survive. When there are unjustified restrictions of rights that ought to have remained private matters, it is detrimental to the prosperity of a nation. First, undue interference from the government can lead people to perceive their government as tyrannical. Second, if a nation’s people do come to regard their government as authoritarian, they are more likely to rebel against it. While I would not want to suggest that governments are not made up of people who might genuinely care about the welfare of the people they have been elected to represent, a person who is benefitting from extreme power due to their position in a government would do much to hold onto the power they have. When a powerful group of people who are all focused on maintaining the status quo is given the opportunity to exercise their power, they frequently take advantage of the situation. Disregarding the moral ambiguity of such practices, it is also counterproductive to overregulate the lives of citizens. The United States was

founded on the idea that all people have inalienable rights. These include the well-known “life, liberty, and pursuit of happiness,” but also the right to freely express oneself, freedom of religion, and the right to safety, which includes the right to have our basic survival needs met.

There are, of course, reasonable restrictions on personal freedoms both in ancient and contemporary history. Ancient Athens’s economy relied so heavily on the labor of enslaved people and *metics* that it made economic sense to give non-citizen residents of Athens, be they enslaved or free—similar protections afforded to citizens. It was likely enough that an enslaved person might buy their own freedom that Pseudo-Xenophon, or “The Old Oligarch” as he is sometimes known, complains about this, saying “it is no longer profitable for my slave to be afraid of [others]” (1.11). As if to add insult to injury, in The Old Oligarch’s mind, the common Athenian citizen was virtually indistinguishable from an enslaved person or *metic*. A man could not strike another without facing the chance that he might have struck another citizen and then suffer the legal ramifications.

In modern American history, the most well-known reasonable restriction of personal freedom is the abolition of slavery. Prior to 1865, the ability to own another person was seen as a personal matter, one the federal government should not be involved in. Though a significant portion of the citizenry of the time seceded over the issue; over the years we have come to recognize the necessity of abolishing slavery. Fleming says, “Lincoln’s presidency was...the second American founding, which turned a constitutional system established by Washington, Adams, and Jefferson as a regime of liberty into a radical Jacobin state rooted in the principle of equality” (51). Because of the ideology that all people are created equal, the question of what a “reasonable” restriction looks like becomes substantially more complicated. Ostensibly, democracy is based on that ideology, but then people must grapple with the riddle of where one

person's freedom ends and another begins. One suggested mindset is that personal rights are similar to personal space: When people are isolated, it doesn't matter much because it doesn't affect anyone else, but the closer people get to each other, the more communication and compromise is necessary to keep the peace. This is a function of an ideal representative democracy, it facilitates communication between many thousands of people during important discussions about protected and restricted liberties. As previously mentioned, neither representative nor direct democracy can fully carry out the will of the people without a concerted effort to expand voting opportunities. Having said that, democracy still represents the good-faith efforts of people in power to protect the common good, even if we don't get it right every time.

The continued protection of public safety through the restrictions of select freedoms is what allows us to exercise our individual freedoms. A democratic government's involvement in protecting the rights and common good of its citizens should be decided by those citizens; although, that is not always the case for either ancient Athens or modern America. Despite democracy's undeniable flaws, it is still one of the better theoretical systems of government in regard to equality and equity.

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