On Positive & Negative Rights

In Federalist #1, Alexander Hamilton warned us about charismatic pariahs who vociferously claim to want to protect our “rights”, yet—eventually—only end up promoting (wittingly or unwittingly) an order that resembles oligarchy.When done intentionally, such demagogues often execute a bait-and-switch in order to rally people around them—before precipitating an oligarchic order from which only the well-positioned benefit.Such figures—even when well-meaning—often succumb to what I’ve called, “Robespierre Syndrome”.

Here is what Hamilton said of those who fetishize (negative) “rights”:

“A dangerous ambition more often lurks behind the specious mask of zeal for the rights of the people than under the forbidden appearance of zeal for the firmness and efficiency of government. History will teach us that the former has been found a much more certain road to the introduction of despotism than the latter, and that of those men who have overturned the liberties of republics, the greatest number have begun their career by paying an obsequious court to the people; commencing demagogues, and ending tyrants.”

Beware the right-wing libertarian who insists that only negative rights matter—that we must ignore positive rights in the name of preserving our negative rights.History has demonstrated that this enticing approach is a recipe for plutocracy.The sales-pitch involves vilifying government per se, while romanticizing a laissez-faire treatment of governance.Here, one reifies the buzz-word “rights” to the point of distraction—ultimately fostering anti-democracy in the name of “democracy”.In this scheme, “rights” is taken to mean only negative rights.People find such a vision alluring simply because many don’t grasp the distinction between negative and positive rights (and the respective role of each in democratic society).Let’s review:

Negative freedoms / rights are things the government protects; positive freedoms / rights are things the government provides.The former assures each civilian personal prerogative; the latter facilitates social justice.That is to say: the former ensures sovereignty over one’s own life (esp. over one’s own mind and identity) while the latter ensures accountability, civic responsibility, and fair opportunity.Thus, the former is concerned with the choices each civilian can make of his own accord (for

the sake of his own life), while the latter involves what each civilian is obligated to participate in as a responsible member of the community (for the sake of everyone involved).One involves one's independence; the other involves our interdependence.

Negative rights are inalienable, as they pertain to upholding individual autonomy (a nascent capacity within all of us).Meanwhile, positive rights must be offered from external mechanisms, as they pertain to social circumstances that involve groups of people working together.Each element plays an integral role in the life of a civilian.In the end, we are both individuals and members of a society.In a civil society, both aspects of our civic existence need to be addressed.Ultimately, we are independent in an important sense and inter-connected in an important sense.

Negative freedoms / rights are a matter of what each person is entitled TO DO (as master of his own life).Positive freedoms / rights are matter of what each person is entitled TO (as a member of a community of individuals).The former can't truly exist without the latter; the latter can't truly exist without the former. In other words, the former kind of freedoms / rights are pointless if the latter kind aren't provided.Meanwhile, the latter kind of freedoms / rights are meaningless if the former kind aren't protected.A responsible State needs to guarantee both.

Though both kinds of freedom / rights are required for a democracy, we often hear the contrary.Right-wing libertarianism (anarcho-capitalism) fetishizes the former—while neglecting the latter altogether .Left-wing libertarianism (anarcho-syndicalism) tends to emphasize the latter over the former.Thus, both ideologies end up compromising democracy in a crucial way.

Progressivism marries the two kinds of freedom / rights, never sacrificing one for the other.Each kind of freedom / right is required in order to ensure that one group isn't allowed to dominate / exploit another group.If only the negative rights are ensured, entire groups of people can be marginalized: those without socio-economic status may easily become disenfranchised because structural inequalities will form (and opportunity becomes unfairly allocated).If only the positive rights are ensured, then a person is deprived of freedom of conscience and free enterprise may be stifled.

Protection of negative freedoms is about guaranteeing individual liberty—the prerogative to conduct one's private affairs as one wishes, free from coercion.The basis for this is the value of autonomy: that each of us must be masters of our own lives.This is predicated on the role of independence in a genuinely democratic society.

Provision of positive freedoms is a matter of ensuring universal access to certain things—things to which all civilians are entitled irrespective of socio-economic status—things that are required for genuinely equal opportunity (i.e. social justice).Such provisions are needed in order to effect the “general welfare”—a role of the State that is explicitly stipulated in the U.S. Constitution’s Preamble.

The basis for the provision of positive rights is the value of communal solidarity and social responsibility.This involves the recognition that—in certain respects—**we’re all in this together**.This derives from our inter-connectedness in a genuinely democratic country.It means that civic-mindedness (i.e. a collaborative effort) plays an integral role in making a society genuinely democratic.

The key to understanding the symbiosis between positive and negative freedoms / rights is to recognize that freedom TO do certain things entails freedom FROM certain things.An obvious example is religion: Freedom TO practice one’s own religion (or none at all) entails freedom FROM being burdened by others’ religions.

Economic freedom requires freedom TO shop around in a free market (of one’s own accord) as well as freedom FROM sickness and destitution.For sickness or destitution prevent people from exercising their economic freedom, pursuing happiness, realizing their potential, and being productive members of society.It is in each person’s best interest that everyone is guaranteed such things.

Social justice involves the negative rights commonly called “civil rights” in conjunction with a guarantee of freedom FROM systems of domination and exploitation.Indeed, my freedom TO exercise my personal prerogative entails me being free FROM burdens incurred by you exercising your personal prerogative.Liberty must be omni-symmetrical.What good is a civil right if I’m inhibited from being able to exercise it by accident of circumstance?

In a democratic society, then, there exist two realms: the private sector and the public domain.The two may co-exist in perfect harmony—so long as the activity germane to one does not infringe on the activity germane to the other.Both realms are delimited by that which is appropriate to each.The Commons involves basic public infrastructure and vital public services required for civil society.Free enterprise (wherein the profit motive is operative) may thrive in concert with The Commons.The public domain deals with things that are properly treated as public goods; the private sector deals with things that are properly treated as consumer

products.In one sense, people are seen/treated as citizens; in the other sense, people are seen/treated as customers.It is important to discern when each is appropriate.

The role of positive freedoms is obvious to anyone who has spent a day living in a civilized community—a place where everyone gets a fair shake, and where nobody is left out in the cold.Indeed, democracy mandates that all civilians have access to certain things.It's why we have police departments, fire departments, public schools, and other crucial municipal services.It's why we have Medicaid and food stamps for the poor, and the FAA for managing air traffic.

In a civil society, all people are entitled to the following things:

- To be taken care of when injured or sick
- To a quality education
- To not be marginalized, oppressed, or taken advantage of by those with more power
- To not starve due to disenfranchisement
- To breath clean air and have daily access to potable water
- To safety in the public square
- To be rescued in emergencies
- To trustworthy verification that the elevators they're using, the cars they're driving, the commercial airliners they're riding, the food they're eating, the bridges they're crossing, the factories in which they're working, and the drugs they're taking have been vetted by a dependable, disinterested party, and are safe.

Positive freedom, then, is a matter of providing universal access to fundamental things on which civil society is predicated.Positive freedom is not about controlling people (as right-wing ideologues love to say); and it certainly doesn't compromise negative freedoms.To privatize or fail to provide any of the above things is to severely cripple democracy.Failure of the State to perform these tasks adequately deprives a society of the positive freedoms on which democracy depends.

Positive freedoms empower people to realize their potential as citizens.Such provisions require a special kind of system—one that is categorically impartial and quarantined from conflicts of interest.Market forces cannot accomplish this task.Only a meta-market mechanism can ensure such things for all people, irrespective of socio-economic condition.The State is such a mechanism.

State intervention has an important role to play in democracy because in order for negative freedoms to have a point (for all people), the prevention of certain things is required:

- Equal opportunity requires prevention of structural inequalities.
- Fair competition requires the prevention of barriers to entry and of monopoly power.
- Promotion of the general welfare (as specified in the Constitution's Preamble) requires the prevention of negative externalities from business activity.
- Social justice requires the mitigation of adverse neighborhood effects emanating from social activity.
- Economic stability requires the prevention of abuses of highly concentrated private power (i.e. ROTA of corporate activity)

Without such conditions, our cherished negative freedoms are pointless. The free market cannot ensure such preventions, as market forces are blind to such concerns. These key conditions can only be effected by the State.

In a democracy, individual autonomy (the domain of negative freedoms) and social responsibility (the domain of positive freedoms) co-exist harmoniously.Each is necessary for preventing any individual from being exploited / dominated by those with more power.Both kinds of freedom, then, are imperative in fostering civil society.

Positive and negative freedoms / rights are symbiotic, not antithetical to one another —and so must be addressed hand-in-hand.It is the marriage of the two kinds of freedoms / rights that enables a society to be a liberal democracy.One without the other entails an un-democratic condition.To prize one at the expense of the other is to compromise that on which a civil society is based.