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When discussing the two types of rights discussed in class, we find a large commonality between them, both being concepts that make up what we are today or what we strive for in our society. The thoughts that will be presented have made human nature evolve in a governmental aspect as well as through thought itself. You have an old concept, the legal protectable interest, which provides the framework for how an individual can proceed to gain justice in a society, and the newer second one being the idea that human beings possess inherently natural rights (Kierst Fall Lecture notes, 10.15.24). This idea is based off that rights don’t necessarily come from some sort of higher government but rather that they are built within us, as a blueprint in the human race design.

The new idea which falls into the category of civil liberties also falls into being protected by the bill of rights. The document is basically sort of the backbone as well as thought of to me at least as a safety net, after the past lectures this week. The bill of rights, composed of 10 amendments all deal with civil liberties or rights of conscience (National Constitution Center, n.d.). It feels as though to me that the bill of rights was created as something deep rooted to entirely bring upon the principles of equality. These rights of conscience liberties starting with the first amendment such as freedom of speech, freedom to assemble/petition, and freedom of press are things we do and experience in our day to day lives today. We are able to assemble through religious freedom, church being a dominant example, as well as having the right to peacefully protest as a group (Kierst Fall Lecture Notes, 10.15.2024).

When restating that human beings possess inherently natural rights that idea was sort of sparked by the enlightenment era. The enlightenment era was started in the 1700s and was one of the most influential movement the world has perhaps seen. As we know, the enlightenment era was the start to what would become the United States, and to what would ensure the development of The Declaration of Independence in 1776. Although before that came numerous advances, in philosophical aspects, and being one’s own freedom of thought itself being the most important. One’s freedom and awareness in a society. One’s ability to not go in blind in a sense and not only rely on faith, but science. A man by the name of Philip Livingston who was a founding father of our nation around the time responded to previous claims of freedoms only being granted by statues. He stated “In the name of America, I deny it. [Human rights] are those which we are entitled to by the eternal laws of right reason, they exist independent of positive

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law, and stand as a measure of its legitimacy (The Idea of Right and the Constitution, Kierst, Slide 14).”

When looking at the Enlightenment’s conception of the origin and purpose of government, we find that it's the experience and observation that tells us that human beings share the same human nature. The government can only function from a design that is just and tends to the human experience. This idea that all are born to live until they die and, humans need to acquire things from nature in order to survive. These fundamentals ultimately translate into life, liberty and happiness specifically noted in the Declaration from Thomas Jefferson after grabbing inspiration from John Locke (Kierst Fall Lecture Notes, 10.15.24). John Locke being the political philosopher that he was, came up with the idea that “men are by nature free and equal against claims that God had made all people naturally subject to a monarch. He argued that people have rights, such as the right to life, liberty, and property, that have a foundation independent of the laws of any particular society (Tuckness, 2020).

The next name that highlights this enlightenment era would be Jean-Jacques Rousseau. He was this important philosopher who cared highly about morals and had a valuable understanding for the great of good. Understood a valuable exchange that had to occur in order for the great of good. Now, when looking at the works of Rousseau we find the idea of the social contract. When we say that every individual in the state of nature is Sovern, meaning a supreme power over a unit of government (Legal Information Institute. (n.d.-b), we find that in order for a society to flourish, we have to give up our sovereignty for the greater good. We do this to preserve our rights. In other words, “we do not give up our rights! We give up our sovereignty (Kierst Fall Lecture Notes, 10.15.24).”

Now onto the idea which is the republic in which makes up a governments society and has two functions. To protect the rights of the individuals in this social contract. Then, to protect the public interest as explained by Rousseau.

Continuing onto this framework of ideas found in the origins of Government and through Jefferson we find that these fundamental rights propose a claim and continue with the assertion that: “No condition of Birth, family, social status, or other societally created condition, grants, enlarges or reduces these things. This translate that no matter what situation you come from, the circumstances shall and will not keep you from possessing the equal rights humans need to have

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in a society. While talents, attitudes, capacities, and fortunes very greatly, these things do not. We are equal Just different. The idea that “Rights exist prior to, and independent of, government (Kierst Fall Lecture Notes, 10.17.24).”

Obviously, looking at our history as nation, we have not followed these blueprints laid out for us. Obviously when these blueprints were laid out, the founding fathers were not considering women and people of color. They were not considering the diversity we would have today or the diversity they had even back then. They didn’t view anyone but the white man as being involved with these claims. They should have, but they didn’t. With our recent class discussions both the rights we explored created a framework for how we interact within our society and what are norms we abide by sub-consciously. When you have a society where one is able to go and litigate their legal rights, or seek justice for being wronged, you have a protected society. Then, the idea of the natural rights, civil rights, and human rights stem the idea where the government has not given you the ideology, but letting it be known and emphasizing that it is in our DNA that creates an individual within the society to own those norms, and overall, you have this flourishing society. You exist, not only as a part of the government, but in tune with human nature.

I understand that we have come a long way in our society. As professor Kierst noted, “as society changes, we have to change as well (Kierst Fall Lecture Notes, 10.17.24). This is why the word such as “intention” goes such a long way. The bill of rights ties into this in a way that is favorable to our daily lives. Whether or not we choose to assemble, bear arms, and say what we want without inciting violence, we possess the freedom not only intended by what is written on paper, but was human nature, higher power, or under God intended. We may participate in religious freedom and have that separation between the state. We may hold gatherings, participate, and engage in peaceful protests all intended by these factors.

The two co existing elements of the republic being brought to light by the enlightenment are as demonstrated previously through Rousseau within the social contract act as a safety barrier for societies public interests. As back than we were told that rights basically are inherently given to us from within our own realms of human nature we now intend it to not just be for the white man, but for all people. This is regardless of gender, economic status, race, sexual orientation, and other factors. We can conclude from this era of the enlightenment that

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even though each human is entirely far apart from each other in terms of similar attributes, we are most importantly equal. We may not be the most gifted in playing a specific sport, and learn things at a rate like our peers, but we are equal. We may grow up in different parts of towns, have hindered opportunities as others, and have hardships bigger than others, but we are equal.

Next, when we speak on the great debate between Alexander Hamilton, the New York delegate at the constitutional convention of 1787, and James Madison as one of the founding fathers, we find in their debate arguments as to why or why not we should include a bill of rights to our constitution. The constitution is used as a document that we use to litigate court cases, find intention, and make sense of the whole thing when used in the court of law. Although we have somewhat of what people might say a strong idea of the constitution that acts as a pillar in our country for justice, around the time of debate it was a very touchy topic. The debate was so touchy because it was based off of what could happen, what won’t happen, and what needs to happen. There was not only a sense of urgency but also a sense of worry as to what we’re basing our country on. First, we will elaborate on Alexander Hamilton’s arguments as to why he expressed as to why there should not be a bill of rights.

First, Alexander Hamilton and those who supported his thoughts being federalists believed that adding anything to the constitution was a horrible idea. James Jackson an important figure pointed out that “government had not existed long enough to know it's flaws (Building the bill of rights Liu et al, n.d.)”. The bill of rights numbered as the first ten amendments would be unnecessary and would cause more danger to society and freedom itself for a democracy. Alexander Hamilton than would add to this idea stating, "bills of rights are in their origin, stipulations between kings and their subjects... they have no application to constitutions professedly founded upon the power of the people (Hamilton, Federalist No. 84).” In other words what I got from this is that federalists bring the point up that nobody had not before granted the government to limit the things listed in the first 10 amendments, like free speech, right to bear arms, and freedom to plead the 5th to no incriminate oneself, we should not propose that these things could eventually be taken from us.

Another example as to why Alexander and his colleagues believed that the bill of rights was unnecessary is the idea of exclusion. Adding specific rights leads to miss interpretation and exclusion of other rights not necessary written down at the specific time as the bill of rights.

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(Kierst Fall Lecture notes, 10.17.24). This means that since we add one specific right or limit rights as to what’s on the bill that anything not listed on this bill would be enforced by the government in the future. This would allow for an abuse of governmental power.

Further explanation as to Alexander Hamilton reasoning was the fear of having to keep on adding things to the constitution which would allow for an ongoing never-ending addition to the documents (Kierst Fall Lecture Notes, 10.17.24). In other words, something would always have to be ratified in the constitution and the constitution itself would lose its original reputation. As some of these ideas were great points, and most defiantly probably needed to be brought up during this convention, James Madison received some reassurance that would ultimately decide the fate of the bill of rights.

James Madison proposes the Great difficulty to add a greater understanding of the bill of rights and why it is necessary. The Great Difficulty as explained by Madison is “In framing a government which is to be administered by men over men, the great difficulty lies in this: you must first enable the government to control the governed; and in the next place oblige it to control itself (Research guides: Federalist papers: Primary documents in American history: Federalist nos. 51-60).” In other words, the problem at hand is to have an government control the people and then allow the people control themselves while agreeing to terms.

The next example of an counter argument that ultimately persuaded Madison and others to propose a Bill of Rights lies in the powers of congress. The Bill of Rights “Will act as an restraint on Congress, as an expression of the Sovereign’s will (Kierst, Slide 18, 2024).” In other words, while examining the idea here we can conclude a couple things into why this reasoning was so important. First when people are elected to government seats and especially in congress, this would not be enough to keep the people safe against the government. Their needs to be some kind of pillar that doesn’t budge. Some sort of boundary that cannot be crossed. Their needs to be “a structural impediment to majorities using congress to oppress individual rights. This in Jeffersons words will ‘put a check into the hands of the judiciary’ (Kierst, Fall Lecture notes, 10.17.24)”.

Thomas Jefferson had written and spoke of why the ultimate function of the Bill of Rights would be so important. Jefferson is most responsible for Madison believing the things he did and furthering the development of the Bill of rights into the constitution. Thomas Jefferson

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wrote, “written constitutions may be violated in moments of passion or delusion, yet they furnish a text to which those who are watchful may again rally and recall the people; they fix for the people the principles of their political creed (The Idea of Right and the Constitution, Kierst, Slide 21).” The idea that written constitutions can be violated when normal human attitudes are in play requires the idea for the Bill of Rights. When I try to uncover Jeffersons true intention behind this statement, it leads me to believe that what he meant was quite simple. I think he intended for that when someone hypothetically hears accusations of crimes someone may or may not have committed, it's easy to judge and want that person to face consequences immediately depending on how bad the crime was. We can use the 5th amendment in the Bill of Rights as a prime example. The famous “plead the 5th’ allows for no one to be “deprived of life, liberty or property without the due process of law.” In other words, without this amendment, you could potentially be sentenced without have an attorney to back you up. You can remain silent as you don’t want to incriminate yourself. This protection allows for the government not just throw someone in jail or sentence someone to death based off accusations.

Another prime example we can use from looking at Jeffersons statement is the Eighth Amendment. The Cruel and Unusual Punishment. The Eighth Amendment stating, “Excessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted (Congress.Gov).” Even though some have stated things like lethal injection, and the chair being cruel and unusual punishment, you most likely don’t have to worry about being stoned to death at the courthouse. You don’t have to worry about being fined a ridiculous amount of money for a parking ticket. When I say ridiculous, I want to clarify it being absurd, like 500,000 dollars as I know there can be somewhat expensive fines.

The first amendment possibly being the most important to us all in a democracy such as the United States allows for freedom of speech. This was probably the most important to have as an Amendment so that it is clarified apart from the constitution. Without this Amendment I honestly think that it would leave so many doors open to a dictatorship occurring in our country.

It’s obvious that the Bill of Rights needed to occur to keep the people safe from governmental abuse and keep the government from abusing the people’s right to freedom. The original constitution was not enough to protect our freedom and the Bill of Right’s was a necessary written instrument that is so important for the development of our society.