

THE CENTRAL ISSUE

The moral limits (if any) on what a democratic government may do to any member of a minority or to any member of a politically powerless majority.

SOME BASIC QUESTIONS

(1) What is the nature of these limits and what is their ultimate moral foundation? Are these limits fixed by public perception of the common good (so that the government is merely constrained to act in what the people perceive to be in the public interest), or by the natural rights of its citizens?

(2) What form of constitution is more likely than any other to result in government's respecting these limits? Which institution(s) should be charged with the power to decide whether government has heeded or violated these limits? Assuming three branches of government, should the power be given to the legislative, executive, or judicial branch, or some combination thereof?

(3) Assuming that the limits (or, at least, some of them) are enshrined in a written constitution, how should the institution that is charged with the function of interpreting them decide what these limits require in particular cases? Should it look to (i) the "plain meaning" of the relevant clauses, (ii) the "original intent" of the framers or ratifiers, (iii) moral theory, (iv) some combination of the three, or (v) something else entirely? What is the proper role of precedent in the enterprise of constitutional adjudication?

RIGHTS v. UTILITY

The Rescue (Life)
The Innocent Man (Liberty)
Midas's Ferrari (Property)

THE VOCABULARY OF RIGHTS

Rights as constraints on action

Infringing a right

A infringes B's right to X = A takes X away from B.

Violating a right

A violates B's right to X = A impermissibly infringes B's right to X.

RIGHTS AS TRUMPS

Rights Trump Utility

It is impermissible to infringe a right merely in order to produce a greater amount of good.

Apply to Cases

The Rescue
The Innocent Man
Midas's Ferrari

ABSOLUTENESS

A Right is Absolute when every infringement of it is a violation of it (i.e., when it is never permissible to infringe the right).

ARE RIGHTS ABSOLUTE?

The Innocent Threat (Life)
The Plague (Liberty)
The Prize Rosebushes (Property)

If rights are not absolute but trump utility nonetheless, what is the principle that determines when it is permissible, and when it is impermissible, to infringe a given right?