Ostracism, Legitimate Opposition, and the Law of Democracy

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In the fall of 1989 the comparative sociologist Barrington Moore traveled from Cambridge to New York to give a lecture on the democratic prospects of the Soviet Union. A successful transition to representative government, he admitted, would require many moving parts and depend on many contingencies. But Moore suggested that the progress of any democratic project could be measured by a single criterion: did the regime and its people accept the legitimacy of political opposition. Recognizing the value of political rivalry requires a polity to strike a seemingly precarious balance: too little opposition and a regime will lapse into authoritarianism, too much and the result is frightful violence. A society’s ability to achieve this balance, to allow for an effective opposition was simply: “[t]he key characteristic of liberal democracy.”

Today, most countries hold elections. Many fewer countenance a robust opposition—polities that struggle with the practice range from members of the EU such as Hungary, to Latin American regimes like Venezuela, to founding members of the Arab Spring such as Egypt, and, of course, to Moore’s subject, Russia.

As I will argue, energetic, regular political competition advances important moral interests. But despite Moore’s encomium to legitimate opposition, contemporary political theorists have not subjected the practice to careful interrogation, instead deferring to the accounts of its character provided by historians and historically-minded political scientists, who have lavished it with attention.

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In the canonical American work on the topic, *The Idea of a Party System: The Rise of Legitimate Opposition in the United States, 1780-1840*, Richard Hofstadter contended that: “[t]he idea of a legitimate opposition…is an immensely sophisticated idea, and it was not an idea that the Fathers found fully developed and ready to hand when they began their enterprise in republican constitutionalism in 1788.” The acceptance of opposition was yoked, practically and intellectually, to the realization that political parties were necessary to the effective functioning of representative government. According to Hofstadter, this discovery triggered a reconsideration of the boundaries of acceptable political action. No longer would the test be whether someone was a member of a party. The mark of an illegitimate movement would be its ideology—specifically whether its members were disloyal to the “constitutional consensus” or to the state itself.

In the wake of Hofstadter’s groundbreaking work it has become commonplace to assume that the practice of legitimate opposition would be empty without party competition. Among classicists and historians of the ancient world this view is taken for granted. As the eminent historian Paul Carteledge contends: in Athens “[t]here were no political parties in the modern sense, and so no concept of a loyal opposition.” It is as if the practices are linked together syllogistically—i.e. legitimate opposition requires concerted opposition to existing policy; parties carry out concerted opposition; legitimate opposition requires parties.

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4 I treat loyal opposition and legitimate opposition as analogues—the former predominates in British usage, the latter in the United States.

In this essay, I pry apart this syllogism using the political practices of fifth century, democratic Athens as a crowbar.\(^5\) I do not offer a tendentious reading of the historical evidence or propose implausibly that the Athenians self-consciously formulated the idea of legitimate opposition. Instead, I outline a plausible definition of the idea and consider whether fifth century Athenian political life possessed institutions and practices consistent with that definition. Focusing on the institutional innovations of the fifth century, including ostracism and the rules governing its political system—its law of democracy, I show that the Athenians distinguished, in practice, between acceptable and unacceptable forms of competition.\(^6\) And though procedures like ostracism increased the risks of political leadership, substantial room remained for productive forms of opposition.

Reconsidering the origins of legitimate opposition allows us to reappraise its value. Modern accounts of legitimate opposition ask whether parties or individuals are ideologically committed to the regime. The Athenian version, I argue, focused not on ideology, but on the ability of an individual to wield political power that was excessive and undemocratic. Common to the two approaches is an awareness that a self-ruling polity may fail—a reality that rarely informs contemporary theories of democracy. The problem resolved by the ancient and modern forms of legitimate opposition is not how to allow for the greatest degree of democratic rivalry, but how to garner the benefits of competition without endangering the polity itself.

\(^5\) This essay is one part of a genealogy of the idea of legitimate opposition. As Raymond Geuss argues, genealogies can provide “a historical dissolution of self-evident identities.” Raymond Geuss, "Genealogy as Critique," *European Journal of Philosophy* 10, no. 2 (2002): 212.

Section 2: Defining Legitimate Opposition

For the purposes of this essay, I will assume that a polity features the practice of legitimate opposition when opponents of the political status quo have the liberty to seek changes to the reigning government or policy via a regularized form of political competition. There are many legitimate or justifiable ways of opposing the government, from writing letters to the editor to protesting in the streets. Consistent with the way the term is normally employed, however, I will assume that the practice of “legitimate opposition” refers to a specific subset of oppositional activity: the pursuit of official power via a regularized process. By implication, though dissident activity in contemporary China may be legitimate, it is not evidence of the practice of legitimate opposition.

What are the benefits of the practice, the reasons to value and promote it? In this essay, I focus on three paradigmatic ends of legitimate opposition. The list is not comprehensive. And even if a polity reliably achieves these ends, its political system may not be fully fair or just. Legitimate opposition is not a synonym for liberalism. But I believe the ends generated by the practice are morally valuable nonetheless and to the degree that we observe political competition generating these ends, we can gain confidence that the regime features a form of legitimate opposition.

One paradigmatic end of legitimate opposition is that it increases the costs of misrule. In the economic realm, firms that are not challenged by competitors have incentives to set the level of output, the quality of the output, and prices in ways that harm consumers. Harm can result when the management of a monopoly aggressively seeks profits and when the monopoly does not produce efficiently, acting as a “lazy

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monopolist.” In the political domain, groups with the political field to themselves may also seek to extract onerous rents from the populace. Under less industrious leadership, such groups may simply fail to supply needed resources or policies. But in regimes where criticism of the current government or current policies is accepted, those seeking power and influence will have an incentive to scrutinize current activities and call out evidence of misrule. And by increasing the likelihood that a policy can be changed or an office holder replaced, regular competition may increase the returns of effective governance relative to both aggressive rent-seeking and malignant neglect.

A second paradigmatic end of legitimate opposition is that it allows those who disagree with a state’s policies to bring their grievances into the political arena and to win support for a change. To understand the value of this end it may be helpful to consider a regime in which the majority supports and perhaps even elects a government, but in which active opposition is not abided. In this regime, many citizens would face an unenviable choice between quiescence and legal sanction. This follows from the simple fact that most polities are marked by deep-seeded disagreements, shifting and intractable differences in interests, and an inability to arrive at a rationally motivated consensus. As a result, even under the best political and social conditions, many will view current law and policy as inconsistent with their preferences. These individuals will suffer if they are not able to make their views known publicly or if they are not able pursue changes in current policies. Moreover, when conditions, preferences, and interests shift, as they do inevitably, support for the government may subside, increasing the number of citizens harmed by their inability to challenge the government. In a popular regime lacking the practice of legitimate opposition, the dissatisfied may reasonably question why they are forced to quietly

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submit to visibly suboptimal policies. By contrast, as Adam Michnik, a polish journalist and intellectual, has argued, robust democratic competition allows citizens to “name things by their proper names, to articulate conflicts as conflicts.”

A third paradigmatic end or ends furthered by serious opposition are the intrinsic benefits of democratic participation. These goods can be attained just in case one participates in a process that is suitably democratic, they are therefore intrinsic to the process. Certain important interests, like the recognition of one’s status as a moral and political equal or the development of one’s character and capacities can be achieved via participation in a democratic process, whether or not that process achieves any particular end, such as justice or economic growth or consistency with one’s preferences.

Paradoxically, to garner those benefits, citizens must believe that their participation is instrumentally efficacious. Consider the cases of virtue and recognition. Virtue, as Jon Elster, has argued, is a side-effect of the pursuit of some other valuable end, like justice. The effort to achieve justice, with its losses, collaborations, compromises, and triumphs, may contribute to the development of one’s character. But if one knows at the outset that political participation cannot advance the struggle for justice then that participation is unlikely to generate virtue; participation for participation’s sake is a narcissistic simulacrum of the real thing. Similarly, the attainment of equal recognition also turns on the possibility that one’s preferences could, in principle, have a decisive influence on the political process. If the outcome of a game is

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9 On these costs and their implications, see: Timur Kuran, Private truths, public lies: The social consequences of preference falsification (Harvard University Press, 1995). esp. Chapter 1.


determined in advance, you are not being treated as an equal if you are allowed to play.¹²

Legitimate opposition helps secure the intrinsic benefits of participation by lowering the costs of seeking and implementing changes in policy or government. This assertion rests on the idea that permitting individuals to jointly bear the costs of political action allows them to conclude reasonably that their activity could be successful. Similarly, creating space for dissent provides opponents information about the breadth of opposition to the status quo; it also draws attention to relevant policy alternatives. To the degree that these mechanisms are effective, legitimate opposition underwrites the intrinsic value of democracy.

For the purposes of this essay, I will assume that regimes admitting the legitimacy of opposition feature sufficient political competition to reliably achieve these ends for their citizens. It is worth acknowledging, however, that political competition not only generates benefits, it carries costs as well. Two paradigmatic costs are the devaluation of consensus and the intensification of political antagonism. To limit these costs, most polities will mark out unacceptable forms of political practice and competition. The establishment of legal and institutional boundaries on political competition thus signals that members of that regime draw a distinction between licit and illicit modes of opposition.

Just as different representative democracies feature different methods for selecting representatives (e.g. proportional vs first-passed-the-post), regimes featuring the practice of legitimate opposition may draw distinctive boundaries around competition. Polities also vary in their approach to the opposition’s rights and duties. Almost all regimes insist, rightly, that members of the opposition adhere to the rules of the democratic game. The ends of legitimate opposition would be difficult to attain if this

¹² Something like this argument is outlined by David Estlund, who points out that for a procedure to be fair, the relevant outcome must be uncertain and must be caused by the procedure. David Estlund, "Democratic theory," Oxford Handbook of Contemporary Philosophy (2005). 219.
were not the case. But in some polities the official opposition is granted special access to materials related to the state security, in others, the United Kingdom most famously, the opposition is granted a specific time when they can question publicly the prime minister. With respect to duties, members of the opposition may be required to swear an oath of allegiance or they may be expected to disseminate a set of policies they would pursue were they in government—i.e. to act as a shadow government.

One could attempt to define the boundaries and duties of the “real” practice of legitimate opposition, but I think it best to stipulate that the boundaries of competition, as well as the opposition’s legal rights and responsibilities, should be evaluated and compared on the basis of their relative consistency with individuals’ rights and interests (just as political theorists have evaluated the relative merits of other elements of the democratic process). In this essay, however, my aim is merely to illustrate that fifth century Athens featured a form of legitimate opposition. Accordingly, I do not provide a thorough comparison of Greek and modern modes of competition. My aim in this work is not to suggest that we ought to adopt the Athenian conception of legitimate opposition, rather it is to suggest that we begin the process of thinking through our own.

Section 3: Ancient Opposition

Did fifth-century Athens feature the practice of legitimate opposition? The historical record of this period is notoriously sparse. But there is, I think, more than enough evidence to conclude that the city featured institutions that not only enabled individuals to engage in a valuable form of political competition, but also distinguished between licit and illicit form of opposition.
It is generally allowed that the Athenian demos took power in 507 B.C. The transition was marked by a fundamental redrawing of the Athenian constitution. Not surprisingly those institutional reforms, which are often attributed to Kleisthenes, reflected a concern about aristocratic threats to the new regime. The innovations did not punish aristocrats by diminishing their wealth, seizing their property, or revoking their special standing. Instead, Athens’ new law of democracy increased the cost of translating aristocratic wealth and standing into political power. Anti-monopolistic in character, the reforms marked the illegitimacy of wielding political influence that was excessive and not based on the support of the demos—i.e. undemocratic.\(^{13}\)

Consider the fundamental transformation of the polity’s most basic political units. Previously, the loci of political power had been the the four old attic tribes, groups dominated by aristocratic kinship groups and clans. The influence of these clans, or genes, sprang from their wealth, landownership, religious privilege and their ability to wield influence over a local domain. Leading clans drew additional clout from sources that were external to the city, including foreign regimes like Sparta. Perhaps most importantly, the dominant families’ power over the tribes gave them a trump card over the rest of inhabitants of the polis: Athenian citizenship tracked membership in one of the four tribes. Excluded from a tribe, one was no longer a citizen of the city. In sum, as Martin Ostwald argues, prior to 507, “these families, by commanding a following and by concluding alliances with other prominent families and their retainers, will have competed only with one another to secure the highest offices of state, to which they alone as members of the highest census-class were eligible.”\(^{14}\)

\(^{13}\) My reading of these reforms is broadly consistent with Aristotle’s. In general his reading of fifth century politics is considered anachronistic. But with respect to these reforms, the main line of contemporary scholarship adopts his approach. I address Sarah Forsdyke’s alternative interpretation later in this chapter.

To my knowledge, Aristotle is actually the first author to employ the term: monopoly. Aristotle, Politics, I, iv, 5. See also: Raymond De Roover, "Monopoly theory prior to Adam Smith: A revision," The Quarterly Journal of Economics 65, no. 4 (1951).

Under the Kleisthenic constitution that mode of competition was curtailed. In its place, a new fundamental building block of political life was established: the deme. Each of the 139 demes had their own cults, shrines, assemblies and political officers. Citizenship was now determined by membership within a deme and for the vast majority that status was made hereditary. Athenian citizens were notoriously stingy about extending membership to others, but those who possessed the status now gained a measure of independence from their aristocratic betters. Beyond the deme, at a higher level, ten new tribes were established. The tribes were made up of three smaller units, Trittys, one each from the three main geographical regions of Attica. This decreased the likelihood that the tribes would be dominated by citizens from any one locale or by the dominant clans from that locale. By shifting away from the four attic tribes, the Athenians blocked an essential conduit for transmitting aristocratic status across the political system.

Critically, the demes and revamped tribes also served as the basis for representation within the new council—the Boule—a 500 member body that set the agenda for the people’s assembly. Each year the demes would nominate candidates to fill their pre-allotted seats on the council and a lottery would be used to select which of those candidates would serve in the Boule. In recent years political theorists have doted on the polis’ use of lotteries to fill out the boule and other influential political offices.\textsuperscript{15} Athens’ bonafides as a true democracy has been burnished by the egalitarian qualities of lotteries in comparison to election. But as Mogens Hansen contends, the use of lotteries had a practical side: “the democrats themselves seem to have preferred sortition not because of its being the obvious method of selection when all are alike, but because it safeguarded the power of the people, prevented conflict and counteracted corruption.”\textsuperscript{16} Replacing selection by kinship groups with random


\textsuperscript{16} Hansen, \textit{The Athenian democracy in the age of Demosthenes: structure, principles, and ideology} 84.
assignment further increased the costs of translating social standing and wealth into institutional influence; it disrupted the kinship-based mechanisms linking the powerful with their clients.  

A concern that aristocrats should not wield undemocratic forms of influence infused the legal structure of Athen’s political system, its law of democracy. But did the package of Kleisthenic reforms include a mechanism allowing the polity to actively hold the line against potentially monopolistic power-holders? Among the most famous innovations of the period was the institution of ostracism. It was not wielded against those who merely lacked a form of democratic virtue, such as the ἴδιοτης—private men, who did not play an active role in political life. Ostracism was used to block potential threats to the new democracy. And consistent with the other Kleisthenic reforms—those threats took the form of aristocrats and elites with significant sources of undemocratic power.

How did ostracism work? Every year the assembly would decide whether to hold an ostracism at all. Citizens often voted with a specific candidate or candidates in mind (see story of Kimon below). If a majority of the assembly voted to ostracize someone, the actual ostracism was held a short period later. The gap in time between the decision to ostracize and the decision whom to ostracize allowed for politicking, organization, and preparation. For the final vote, wooden fences were erected, creating a blocked off area within the central market. The area featured ten entrances corresponding to the ten Athenian tribes. If 6000 votes or more were cast, the individual with the greatest number of votes had to leave the city for ten years. Because the decision to exclude was separated from the decision of who would be

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17 Sinclair, Democracy and participation in Athens: 18.
20 There is a disagreement concerning the figure 6000—some believe 6000 votes were need in total, other that to be ostracized required 6000 votes for a particular person. Either way, it appears that the Athenians On the importance between individual vote and the form of voting characteristic of the assembly, see: Melissa Schwartzberg, "Shouts, Murmurs and Votes: Acclamation and Aggregation in Ancient Greece," Journal of Political Philosophy 18, no. 4 (2010).
excluded, the institution is frequently treated as evidence of the Athenian’s impetuousness. But an often overlooked feature of the practice is that by abstaining from voting, keeping the vote total under 6000, the Athenians could reconsider their decision to ostracize someone in a particular year.\textsuperscript{21}

Ostracism seems to have been preventive, aimed at heading off the misuse of undemocratic forms of power. It was not a formal punishment for bad acts taken, nor was it a juridical finding of guilt. This distinctive element of ostracism is reflected in the status of the ostracized. They remained citizens and they retained their property.\textsuperscript{22} And as members of Athenian society they could be called back to the city if a new, greater threat to the demos emerged. Scions of aristocratic families, who previous experience suggested could topple a popular regime, appear to have been the intended subjects of this institutional brushback pitch. No matter the personal status or private resources of a citizen, he was subject to removal.\textsuperscript{23}

Section 4: Kimon vs Pericles

To gain a firmer grip on the regulation of illegitimate modes of competition, it makes sense to consider how the system worked in practice. Aristotle reports that first three citizens to be ostracized had close connections to the tyrants that had recently ruled the city and the fourth, Xanthippus, “seemed to be too powerful.”\textsuperscript{24} But we should not place to great a weight on this analysis since we know so little about those


\textsuperscript{22} Athenian Constitution Chapter 22. Also see descriptions in Forsdyke and Hansen: Forsdyke, Exile, Ostracism, and Democracy: The Politics of Expulsion in Ancient Greece. and Hansen, The Athenian democracy in the age of Demosthenes : structure, principles, and ideology. 35.


\textsuperscript{24} Athenian Constitution 22.6
involved. By contrast we possess substantially more information about the relative trajectories of two of Athens’ most influential 5th century leaders: Kimon and Pericles.\(^{25}\)

Kimon and Pericles both occupy central places in Athenian history. And their similarities extends beyond the historical record. Both led troops into war. Both were leading politicians in the new Kleisthenic regime. Both hailed from aristocratic stock. For all of these commonalities, Kimon was ostracized and Pericles was not. According to both Aristotle and Plutarch, what chiefly distinguished the two leaders was their wealth and the ability to channel that wealth into influence. “Kimon possessed a kingly fortune,” Aristotle reported. “[He] maintained many of the members of his deme, for any member of the deme Laciadae who wished could come to him every day and receive adequate maintenance, and all his estates were unfenced so that anyone who wished could help himself to fruit.” Kimon’s beneficence extended to the city as whole. He played a key role in the building of Athens’ long wall, ensuring the polis’ access to the sea. Pericles’ resources, by contrast, were “not adequate to match such liberality.”\(^{26}\)

Kimon was a political anachronism, his extensive connections and exaggerated wealth allowed him to wield power without pandering to the people. He developed a famously close relationship with the Spartans. And he did not flinch from putting his fortune to work. As Gorgias observed: Kimon “made money to use it and used it to be honored.”\(^{27}\) In contrast, Pericles, as he rose to prominence, was forced to embrace the democratic cause—he championed payment for those who served the public weal as jurors and, ultimately, pomp for the neutering of the Areopagus, a bastion of aristocratic power in 5th century Athens and an institutional home base for Kimon.

\(^{25}\) My account of this rivalry is primarily drawn from the Aristotle’s account in the Athenian Constitution and Plutarch’s essays on Kimon and Pericles.

\(^{26}\) Athenian Constitution 27.3

The removal of powers from the Areopagus marked a hide-tide of Athenian discomfort with undemocratic forms of power and it presaged Kimon’s expulsion from the city.\textsuperscript{28} The general was not in the city when this institutional change was pressed through. He had convinced the polis to send 4000 hoplites to aid his close allies, the Spartans, who were suffering a helot revolt. But the Spartans refused the Athenians’ assistance, and, his aid mission ending in humiliation, Kimon returned to the Athens. Once there he pressed to overturn the democrats’ recent institutional changes. That effort failed. It is therefore not surprising that Kimon was soon ostracized. Plutarch narrates the events thusly: “And so when Kimon came back home, and in his indignation at the insults heaped upon the reverend council, tried to recall again its jurisdiction and to revive the aristocracy of the times of Kleisthenes, they banded together to denounce him, and tried to inflame the people against him, renewing the old slanders about his sister and accusing him of being a Spartan sympathizer.”\textsuperscript{29}

Kimon was not sent out of the polis merely on account of his ideological discomfort with the victory of democratic forces in Athens. As is well known, Athenian democracy had numerous critics, relatively few of which suffered the penalty of ostracism. Indeed, we have no reports of Kimon’s followers suffering any penalties after he was expelled. Kimon was distinguished by his wealth and his relationship with a rival power. His substantial public influence was not drawn from the well of the people’s power.

What of Pericles? Rid of his main rival, Pericles famously ascended to the heights Athenian political life. He was elected as a general for three decades and exercised unrivaled influence over the polis. Echoing Thucydides, Plutarch reports that in his ascendance, Pericles no longer felt the same pressure to court and please the demos.\textsuperscript{30}

\textsuperscript{28} See: Rhodes 1992 p. 72.
\textsuperscript{29} Plutarch, Kimon, Chapter 15
\textsuperscript{30} Plutarch, Pericles, 15.2-3
Once the threat from Kimon and his relatives subsided, Pericles, on Plutarch’s telling, shed much of his democratic leanings, shifting back in the direction of his aristocratic home. Despite this maneuver, he was never ostracized. Why not? As Josiah Ober emphasizes, though Pericles’ wielded significant power, he never gained independence from the people. His clout always rested on his ability to persuade the demos and on his capacity to advance Athenian interests.  

Section 5: Democratic Competition in the Age of Ostracism

Hopefully this abbreviated description of the Kleisthenic reforms and the practice of ostracism adds credence to the claim that the Athenians drew a line between licit and illicit modes of opposition. But did their approach to the law of democracy block out political competition? The scholarly consensus is that Athens featured a vibrant form of democratic rivalry. Individuals sought election as strategoi or generals. Elites vied with each other to influence their fellow citizens as rhetores. And those same elites exercised influence via philoi—groups organized along lines of friendship and personalistic influence. The objects of that competition were power itself, of course, but also honor, influence over the polis’ military engagements, and the distribution of fiscal responsibilities and wages. And this mode of competition was sufficient to supply the three paradigmatic ends of legitimate opposition I described earlier in this essay.

The first end concerns the costs of engaging in corruption or misrule. Those who sought to gain or cement their positions as leaders of the Athenian polis predictably possessed incentives to uncover and expose the negligence or misconduct of their competitors. Consider the case of Thucydides son of Melesias. He was Kimon’s relation and his successor as rival to Pericles and he charged Pericles with having

31 Ober, Mass and elite in democratic Athens rhetoric, ideology, and the power of the people: 90.
“squandered away the public money, and made havoc of the state revenues.”

In response to this charge, Pericles was famously compelled to justify his expenditures to the people. Admittedly, this story is not without its complications. Some classicists dispute Plutarch’s characterization of the clash between Thucydides and Pericles. On Plutarch’s account, the quarrel, which focused on the construction of the Parthenon, was an outgrowth of class struggle and disagreements over the morality of the Athenian empire. These concerns are closely associated with Aristotle and considered unrepresentative of fifth century politics. Nonetheless, it is generally accepted that Thucydides held Pericles to account on questions of both military strategy and finance. And forcing one’s political opponent to justify their approach to fiscal and military policy is simply the basic stuff of legitimate opposition.

Did the Athenian game of democracy provide a forum for opponents of current policies to raise concerns about the status quo? We have substantial evidence that Athenian elites and the Athenians themselves could raise objections to extant policies. The Mytilene debate is the most famous example of this type of political action. Thucydides, the historian, describes the aftermath of a rebellion against Athenian influence by the leaders of the city of Mytilene on Lesbos. The Athenians determined that they would not only punish Mytilene’s leaders, but its people as well, killing the adult males and enslaving women and children. The next day a large number of Athenians reconsidered their decision. A second debate was held between

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34 Even Andrewes admits that this element of Plutarch’s account is plausible. While the scholarship on topic is vast, my account of Thucydides’ life largely relies on: A. E. Raubitschek, "Theopompos on Thucydides the Son of Melesias," Phoenix 14, no. 2 (1960).
35 Thucydides son of Melesias was ostracized. And it would be problematic for my argument if Pericles’ rivals were punished merely for challenging his policies. But Thucydides was not unique in raising these issues. And we have no record of other critics being ostracized. Moreover, Plutarch does not imply that this was the reason for the expulsion. Other sources suggest that the ostracism occurred well after Thucydides forced Pericles to defend his spending. In other words, Thucydides was not ostracized merely because of his opposition to Pericles. Ibid., 94-5., Strauss, Athens after the Peloponnesian War: class, faction and policy 403-386 BC: 27.
36 This conclusion is additionally supported by Demosthenes’ repeated efforts to change his fellow citizen’s minds concerning the threat paused by Phillip of Macedonia. See: Dem. 1-3.
those, like Cleon, who supported the initial decision, and those, like Diodutos, who opposed the policy. As reports of the speeches make clear, efforts to force the reconsideration of past decisions were familiar to the Athenians—Cleon criticizes the practice, while Diodutos, not surprisingly, defends it. Thucydides informs us that “[w]ith the two views expressed so evenly matched the Athenians continued to agonize over the decision and the final show of hands was very close, but Diodotus’ motion was carried.”\textsuperscript{38} That the outcome of the famous Mytilene debate was not unanimous, or not described as such, befits a regime where opposition is lively, entrenched, and normal.

Finally, it is clear that the structure of Athenian competition provided citizens with opportunities to engage in effectual and intrinsically valuable forms of democratic participation. Average citizens could pursue the ends they cared about as participants in the assembly, deciding to speak out if they wished, choosing to defend the policies that advanced their interests, and opening themselves to the persuasion of the \textit{rhetores}. Citizens also participated regularly, if not predictably, as members of the agenda-setting council, as jurors on the people’s court, and in a variety of other public offices. Finally, although contemporary political theorists less frequently acknowledge it, Athenian political competition even offered individuals opportunities to act as a member of a group whether through demes or \textit{philoi}.

In sum, Athenian citizens generated the paradigmatic ends of legitimate opposition via a competitive democratic process. This does not mean that the Athenians achieved a fully just or liberal society. Most inhabitants of the polis were excluded from participation. Slavery was a fact of life. And Athenians were subject to a variety of religious, political, and social sanctions that liberals would regard justifiably as onerous and intrusive.\textsuperscript{39} Despite these real caveats, we can conclude fifth-century Athens

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featured the practice of legitimate opposition. Before discussing the implications of this conclusion, I will examine a few concerns about the account I have provided.

Section 6: A Few Concerns

One might have the feeling that this essay is hobbled by a simple category mistake. Following Paul Cartledge, one could point out that the Athenians drew no distinction between the government and the people themselves, between the rulers and the ruled. No group or party was ever out of government and no group ever controlled the reins of political power. By implication, it may not make a great deal of sense to talk about legitimate opposition in this context.

I will not challenge this view of Athenian institutions. I take it for granted that in Athens power was, in some literal sense, wielded by the people. Still, this conclusion provides no straightforward grounds for concluding that legitimate opposition was not practiced in Athens. Much the same holist perspective is frequently used to analyze contemporary regimes. Modern scholars sometimes contend that the overlapping political, legal, and social checks impeding the free exercise of political power in modern democracies collectively ensure that no particular individual or group can successfully cast itself as the true representative of the people. Taken together, the argument goes, the institutions and practices of modern democracies set power seekers against each other in ways that preserve true sovereignty for the people themselves. This interpretation of popular sovereignty is not inconsistent with the idea of a legitimate opposition; it depends on it. But for my purposes, it doesn’t

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40 Cartledge, "Greek political thought: the historical context," 17.
42 For approaches of this sort, see Ackerman’s We the People and works which have taken a similar approach: Bruce Ackerman, We the people: foundations (Cambridge, MA: Belknap Press of Harvard University Press, 1991); Bryan Garsten, "Representative Government and Popular Sovereignty " in Representation, ed. Ian Shapiro, et al. (Cambridge Cambridge University Press, 2010); Larry Kramer, The people themselves : popular constitutionalism and judicial review (Oxford: Oxford University Press, 2004).
matter whether one finds this view persuasive. The key point is that accepting this holistic interpretation of representative government would not close off one’s ability to recognize that modern regimes are shaped by political competition and rules concerning its propriety. The same logic, I believe, applies with the just same force in the just same way to the case of the self-governing Athenian polis.

Those who still insist that because the Athenians lacked a form of party government they could not possibly engage in legitimate opposition have succumbed to a formalistic strain of incuriosity. By ruling out, ab initio, the possibility that Athenians practiced a form of legitimate opposition we make ourselves liable to accept the natural and necessary relation of certain political practices, such as parties and democratic competition, which may or may not be natural or necessary in fact. The correct way to proceed, I think, is to provide a reasonable definition of legitimate opposition and seriously consider where we can find evidence of the practice. Athenian political life was surely shaped by rivals seeking influence and by disagreement amongst those possessing conflicting political and material interests. While the majority may have ruled, its composition was not constant. Dissent was a fact of life and the sovereign’s mind could be changed. Given these facts, I think it would be puzzling if the Athenians lacked a conception of acceptable forms of democratic competition.

A different genre of concern about my argument is focused on the practice of ostracism. Was it really used intentionally to control the powerful? A famous story concerns Aristedes, whose propensity for the right action earned him the informal title “The Just.” In the moments before a final ostracism vote was to occur, an illiterate citizen asked Aristedes for a favor, though he did not realize he was speaking with Aristedes. The man asked to have a name inscribed on his ostracon. As the story goes, the name the citizen asked to have written was Aristedes, The Just. When
Aristides enquired what wrong he had committed, the man is said to have responded “None whatever…I don't even know the fellow, but I am tired of hearing him everywhere called 'The Just.’” Historians do not credit the story, but it attests to the possibility that ostracism could be used to banish those who did not possess destabilizing forms of undemocratic power. This possibility shouldn’t trouble us overly. Laws and institutions are not always used consistently. In our own society, if a prosecutor seeks an indictment on the basis of weak evidence, as is she has the power to do, we would not be justified in concluding that prosecutors are afforded discretion in the name of prosecuting the innocent. To assess the aim or force of ostracism, I have considered it in the context of the other reforms of the period. In that light, even if ostracism was subject to misuse, it seems sensible to treat it as one element of a comprehensive institutional effort to reign in those who wielded undemocratic power.

The author of an illuminating recent monograph about ostracism, Sarah Forsdyke, offers a different interpretation of the ostracism. She contends that the practice was largely symbolic. It was not a shield used to protect Athenian democracy from undemocratic forms of power, but a pantomime institution, epitomizing the people’s power and reason. Before the establishment of democracy, Forsdyke shows, aristocratic rivalries often resulted in violent stasis and tit-for-tat exile. With their victory, the people had domesticated aristocratic rivalry. And ostracism dramatically portrayed that democratic achievement.

Forsdyke's novel interpretation is finely balanced on two a priori claims. The first claim is that the relative infrequency of ostracisms illustrates their intentionally symbolic character (no ostracism were held after 417, though votes whether to ostracize someone continued to take place). But we might also interpret the lack of ostracisms after 417 as evidence of the practice’s initial success and related

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obsolescence. Simply put, as the menace posed by aristocratic rivalry dwindled, the need to ostracize would have diminished as well. It is common for laws to require less frequent enforcement as the practices they protect become elements of the status quo. Consider a modern analogy. Communist citizens are no longer subjects of active repression in the United States. But it would be a mistake to assume that laws and policies targeting communists were merely symbolic. Those laws and policies are no longer employed with the same vigor because communists no longer threaten the regime.

Forsdyke’s second claim is that the expulsion of a single actor could not have protected the regime from a substantial threat. Even if this claim were persuasive, it would not close the matter. Many laws and policies miss their intended targets. But on that narrow basis we may not conclude that those laws have no target at all. Consider school integration in the United States. Looking at schools that remain segregated, one might falsely infer that efforts to integrate schools were wholly figurative. But it may simply be the case that the relevant policies were created in earnest and lacked sufficient support to bring them to success. Or perhaps the policies were poorly designed. Futility does not imply symbolic intent. And that conclusion could easily be applied to the institution of ostracism.

It is not clear, moreover, that we should even accept the premise of Forsdyke’s second claim. Athenian politics were highly personal in character. And as readers of contemporary scholarship on Athens are repeatedly advised: the regime lacked organized parties and movements. Given these facts, the anticipatory expulsion of a successful political entrepreneur might have significantly impacted the polity’s course.

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45 Ibid., 149.


47 Consider the example of graduate students who fail to complete their dissertations. Is their intention when they enter graduate school merely symbolic? Some of them surely enter the program with the intention of finishing; they just fail to do so.

48 Strauss, Athens after the Peloponnesian War: class, faction and policy 403-386 BC. 27.
Furthermore, the shadow of ostracism may have dissuaded efforts to accumulate and spend power in currencies that were not democratic. Despite the persuasiveness of much Forsdyke’s analysis, the weakness of these deductive conclusions belie her effort to recast ostracism as exclusively symbolic.

Section 7: Does Ancient Opposition Matter?

What conclusions can we draw from a comparison between ancient and modern approaches to opposition? If my argument has been persuasive, we should no longer treat the acceptance of rival political parties as the bearing wall of legitimate opposition, the element on which all other parts of the practice rest. What is common to both conceptions is the idea that political competition is valuable and should be encouraged despite the fact that certain forms of rivalry might threaten the regime.

For the eighteenth-century architects of representative government, partisan activity stoked individuals’ irrational passions and possessed the capacity to bring low constitutional government. That approach to the fallibility of self-government continues to inform contemporary conceptions of opposition—we remain especially concerned about the threat posed by religious and otherwise ideologically extreme parties. Among the Athenians of the fifth century, the primary threat arose instead from those whose political influence did not depend on the demos. Under both systems, citizens could actively contest current policies and actively seek power without being treated as if they were seeking to destabilize the regime.

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50 On this topic, see the collection: Markus Thiel, ed. *The 'Militant Democracy' Principle of Modern Democracies* (Surrey, UK: Ashgate, 2009).
This conclusion goes some way in explaining why contemporary political theorists have not generated significant insight into legitimate opposition or its benefits. The lacuna exists, I believe, because theorists rarely grapple with the reality that democracy is a sectional form of government, achieved not via agreement but through the collective strength of those who stand to benefit from it. Those scholars rarely acknowledge the possibility that democrats’ grip on power may falter, and that popular regimes might fall. It is not surprising then that legitimate opposition has not received its theoretical due. If one assumes broad consensus about democracy’s value, one assumes away the problem legitimate opposition resolves. The challenge of the practice is precisely to garner the benefits of political competition without closing one’s eyes to the threats posed to a sectional, but legitimate form of government. Of course the moral benefits of political competition are likely to seem meager in comparison to the satisfactions of a fully just or democratic regime. But if authoritarian regimes and imperfect democracies are brought into the frame, then the value of opposition, I believe, becomes appreciable.

On Hofstadter’s influential account, the founders of the American republic were forced to fashion a novel, ideological approach to legitimate opposition because history had not bequeathed them examples of the practice. If my argument is persuasive, it may be worth revisiting this conclusion. Rather then confronting a barren historical terrain, it’s potentially the case that the founders rejected the models of opposition on offer. Recall that the Athenians used institutions such as lotteries and the reorganized demes to limit the influence of aristocrats. It is doubtful that the founders would have endorsed a conception of legitimate opposition of that democratic character. Employed to clear the field of those with a dangerous capacity to wield undemocratic power, ostracism, in particular, might have seemed especially

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51 Adam Przeworski, Michael Alvarez, Jose Antonio Cheibub, Fernando Limongi, Democracy and development: political institutions and well-being in the world, 1950-1990 (Cambridge: Cambridge University Press, 2000). Daron Acemoglu and
unattractive to the founding elites. Men with impressive educations, they were not unaware of the practice. Discussing ostracism, John Adams observed that “[h]istory nowhere furnished so frank a confession of the people themselves of their own infirmities and unfitness for managing the executive branch of government, or an unbalanced share of the legislature, as this institution.”

Does the practice have any further lessons for us? In recent years, many scholars of representative government have defended institutional innovations aimed at preventing the development of counter-competitive monopolies. Those accounts thus echo the Athenian approach to legitimate opposition. Nonetheless, we should probably admit the limits of the Athenian analogy. Our politics is waged by large organizations, whether political parties or even militaries. Our politics is less personalistic and the variety of issues a government must address is vast. Governance is now a veritable profession, distinguished from other discrete careers. Finally, perhaps the reason the Athenian approach to legitimate opposition was less focused on ideological tests is simply that they inhabited a less diverse and less divided ideological world. In that world, democracy was not understood as a theoretical ideal to be defended from ideological challengers. Instead it was a practical form of government achieved by the people and maintained through their vigilance against those wielding undemocratic power.

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Conclusion

In the seventh book of Herodotus’ great work, *The Histories*, he describes an encounter between the Persian king, Xerxes, and his counselor Mardonius. While other members of Xerxes’ court were afraid to contradict the king, Mardonius outlined the benefits of disagreements: “O king, if opposite opinions are not uttered, it is impossible for someone to choose the better; the one which has been spoken must be followed. If they are spoken, the better can be found; just as the purity of gold cannot be determined by itself, but when gold is compared with gold by rubbing, we then determine the better.” Through Mardonius, Herodotus outlines one of the benefits of political opposition—that it brings relevant alternatives to the fore, improving the decision-making process. But Mardonius’ analogy also captures the benefit of allowing ourselves to reinvestigate the origins of legitimate opposition. By comparing it with its ancient predecessor, we gain a better sense of the work performed by the modern practice.

The Athenians did not participate in organized political parties but they did draw a line between acceptable and unacceptable forms of political competition. Allowing aristocrats to wield undemocratic forms of power might have threatened constitutive elements of the regime. But not to allow competition would have been a form of self-mutilation, compromising the capacity of the demos to rule itself. The Athenians identified an equilibrium between those two poles and worked to maintain it. That balance is the distinguishing mark of legitimate opposition.

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Bibliography


