

interpretation

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Volume 14 numbers 2 & 3

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Book Reviews

Jerusalem vs. Athens: In Quest of a General Theory of Existence. By Paul Eidelberg. (Lanham, Md.: University Press of America, 1983. xviii + 393 pp.: cloth, \$27.50; paper, \$18.50.)

WILL MORRISEY

“In the history of mankind, two cities stand above all others and vie for men’s souls: Jerusalem and Athens.” To “almost all participants in this conflict,” Jerusalem stands for religion, revelation, and traditional authority whereas Athens stands for philosophy, reason, and freedom of thought. Eidelberg dissents.

These dichotomies are not only superficial; they are a distortion of the truth. We shall present evidence indicating that there is far greater rationality and intellectual freedom in the city of King David and King Solomon than in the city of Plato and Aristotle. We shall show that the Tree of Knowledge, which bore fruit in Athens, cannot survive without the Tree of Life whose roots are in Jerusalem. Indeed, we shall see how the Athenian tree of knowledge, without the Tree of Life, yields madness and death.

Eidelberg’s claim should not be unthinkingly dismissed. As a student of Professor Leo Strauss he had guidance through many of the most obscure yet important neighborhoods of “Athens.” Fortified by the teachings of logician and Torah master Rabbi Dr. Chaim Zimmerman, Eidelberg boldly challenges Strauss on Straussian territory:

Unfortunately, Prof. Strauss did not penetrate the esoterics of the Torah or of the Talmud. Had he done so he would have transcended the quarrel between ancients and moderns of which he was otherwise the master.

Eidelberg makes the still bolder claim that modern historicism, Strauss’s *bête noire*, glimpses a truth denied by the best Greek philosophers: theory and practice can ultimately harmonize, and humanity is perfectible. He makes perhaps the boldest claim of all in calling true revelation entirely rational, superior to philosophy and modern science; the Torah contains the means by which human perfection can be achieved.¹ Eidelberg intends to provide a “general theory of existence” based upon a rational understanding of the Torah. In doing so, he intends to show that modern mathematical physics is not the paradigm of true knowledge; the attempt of modern social ‘scientists’ to use this physics as a model must fail.

Eidelberg writes ten chapters. The first and most complex of these contains

1. By “true revelation,” I do not refer to the subjective experience of the prophet, which may or may not be rational, but rather to what the prophet says.

the “basic principles” of the “Torah Theory of Existence.” Following Zimmerman, Eidelberg discusses twentieth-century physics, arguing that both quantum mechanics and the general theory of relativity disprove the physics of classical Athens but do so by pointing beyond physical existence itself.² This tends to confirm the Torah principle that an epistemology based upon “the postulation of any physical or mental existent, process, or law as self-sustaining” and unified, is a form of idolatry, the worship of a created thing. Thus the Torah stands against any form of monism, as distinguished from monotheism. Although many scholars contend that there is no Hebrew equivalent of the word ‘nature,’ Eidelberg observes that one of the names of God, *’Elohim*, appears in relation to the multiplicity of cyclical forces manifested in creation. However, these forces do not constitute the self-sustaining nature of the philosophers, the nature of which man is a part; rather, “the universe owes its existence to the ceaseless Will of the Creator.” Another of God’s names, *HaShem*, appears in relation not to cyclical-ity but to linear, providential, teleological laws “more fundamental” than the cyclical ‘natural’ laws. This exemplifies the principle of “asymmetric complementarity” whereby nature and history are ordered by means of dualities, one element of each duality being the stronger. In this case, the physical world has ‘its own’ laws but these are governed, finally, by nonphysical laws. “Judaism’s distinctive task” is “to sanctify the physical world so that the latter is brought into harmony with the nonphysical world.” Far from being a handbook for mystics, the Kabala “embodies knowledge” about “the structure of creation, about the relationship between nonphysical and physical existence,” with scientific and mathematical rigor. Judaism thus avoids the “self-gratification and self-glorification” of the Cainites and the “one-sided asceticism or spiritualism” of the Sethites. Two systems of law—the Finite Halacha (*Dinei Adam*), governing immediate daily activities, and the Infinite Halacha (*Dinei Shamayim*), governing “the conduct of individuals and nations throughout history”—combine law, rationality, and morality in a manner Plato and Aristotle would regard with considerable skepticism. But the philosophers are the descendents of Esau, “the nations” or *goyim*, who despite their best efforts inhabit and exploit the physical world and serve egalitarianism. The descendents of Jacob, the Israelites, inhabit the spiritual domain that will master the physical in accordance with Torah principles of hierarchy. Both the descendents of Esau and the descendents of Jacob serve laws that conduce to the perfection of mankind. One might say, however, that the best of the descendents of Esau know that they do not know what they are doing, whereas the best of the descendents of Jacob do know something of what they are doing.

In the second chapter Eidelberg contrasts philosophic pride with Torah *anava*, usually translated as ‘humility.’ He observes that Plato’s Socrates ‘forgets’ justice and gentleness in his final enumerations of the philosopher’s virtues. (The

2. See Chaim Zimmerman: *Torah and Reason: Insiders and Outsiders of Torah*, Jerusalem: “HED” Publications, 1979.

word Eidelberg translates as “gentle” is translated as “tame” by Allan Bloom.) He goes so far as to argue (citing the *Republic* 501a and 541a) that Socrates would have all citizens over the age of ten exterminated, a somewhat harsh reading that allows him to call the ancient/modern dichotomy exaggerated. He also contends that if the unexamined life is not worth living, “it would not be unjust to eliminate those unfit to pursue the philosophic life”—the very ones eliminated from Plato’s republic. But this as it were deadly serious reading of Plato fails if justice is not the philosopher’s virtue or purpose.³ Eidelberg charges that Plato and indeed all the philosophers deify the intellect and attempt to murder God. This manifests their pride. “Pride of intellect is the human vice par excellence.” The Torah man, who is *anav*, “does not even regard himself as ultimately *deserving* any credit for his wisdom or greatness,” for the means of achieving these were given to him.⁴ “Judaism is based on gratitude,” gratitude not only to God as the giver of nature’s cyclical laws, apprehensible by the human mind, but the laws of *HaShem*, inaccessible to the unaided human mind. (Eidelberg denies that this veers into mysticism; Torah laws, once given, “must and can be tested like any scientific theory: by its internal logical consistency and by its power to elucidate nature and history. . . .”)

The man of Torah does not want to make a name for himself; he wants only to sanctify the name of *HaShem*. To sanctify the name of *HaShem* requires not the union of wisdom and power, so much as the union of wisdom and *anava* from which power in the form of just rule and dominion follows.

In this way the judges of the Sanhedrin excel Plato’s philosopher-kings.

In the third chapter Eidelberg writes that “Machiavelli only vulgarized Plato or made public what Plato preferred to remain private.” Plato’s “city in speech” is “founded on force” and “preserved by force mitigated by fraud yet all serving the quest for truth.” (One must ask, Does Machiavelli’s city serve the quest for truth? If so, is Machiavelli’s ‘truth’ identical to Plato’s?) Eidelberg contrasts the inhumane Platonic founding (whether that described in the *Republic* or that described in the *Laws*) with the founding of Israel, and particularly with the efforts of “the most *anav* man on the face of the earth,” Moses.

Infinitely removed from the idolatry of nationalism and imperialism, Israel, serving only God, would be proud as a nation (Deut. 33:29), yet, at the same time, each individual member of this nation would be, like Moses, *anav*. This complementarity of humbleness and pride corresponds to a perfect complementarity between the individual and society which is to be found only in the Torah of Israel.

3. Put another way, Socrates can be said to argue, in effect, that those who want justice more than anything else must commit acts of injustice to obtain their end. ‘Do you want justice *that much*?’ he may be said to ask. Socrates, a lover of wisdom and not so much a lover of justice, clearly does not want justice that much.

4. This does not prevent a man of *anava* from recognizing himself as the wisest of mortals, if this is the fact. There is no merely conventional view of humility, here.

Thus Judaism overcomes the tension between the wise individual and the community—a tension best described by Plato. Eidelberg argues that philosophy makes this tension inevitable because philosophy understands cyclical nature only; *anava* would be irrational in a meaningless, ever-wheeling cosmos. Indeed, what has lately come to be called ‘self-actualization’ “is a fit and all-consuming imperative in such a universe,” as Spinoza more-or-less openly taught. Instead of the tension between the philosopher and the *polis*, Judaism poses a problem, if not necessarily a permanent tension, between the Creator and the created. “How can the Absolutely Transcendent be Immanent?” The problem is “insoluble” by the finite human mind; “mysticism, insofar as it involves a supposed *unio mystico* with *HaShem*, is utterly foreign and abhorrent to the Torah,” a denial of God’s transcendence or holiness. We can only know God “indirectly through His works or actions”: through nature, history, and especially through His most illuminating work, the Torah, which “harbors a pure system of symbolic logic” whose rules of exposition are given orally “only to the Jewish people, and then only to those who, through long and rigorous discipline, have mastered the logical system and esoteric wisdom underlying the deliberately disordered teachings of the Talmud.”

The six following chapters include two on history, two on science, and two on what might very loosely be called psychology. In the chapters on history, Eidelberg writes that “the primary historical function of Greek philosophy was to destroy the Greek pantheon, that is, primitive idolatry.” Platonic “rationalism” identifies Being with being known,” thus deifying intellect. “In the denial of creation *ex nihilo* is the fundamental conflict between Athens and Jerusalem.” Aristotle’s “empiricism” also defies intellect by working its way to a “Prime Mover,” defined as “thought thinking about itself.” “A Creator-God would be absolutely inscrutable, an offense to the philosopher’s intellect.” Eidelberg observes that this deification of mind paradoxically “imposes limits to man’s intellectual power and creativity” because it “denies the possibility of man ever achieving a *radical* power over nature,” the power to “modulate” natural laws. This power “presupposes knowledge of nonphysical laws from which the laws of nature are derived.” The moderns, one might say, absurdly try to use nature to conquer nature. But the only way to truly conquer nature is to employ nonnatural laws; creativity ‘in God’s image’ rather than the ersatz creativity of self-deifying philosophers, is the promise of Judaism.

In destroying the Greek pantheon, the classical philosophers weakened the *polis* and encouraged universalism—the conception of “man qua man.” Despite their attempts to conceal this apolitical teaching, the classical Greek philosophers thus served the idea of equality in the sense that all nations could be regarded as equally artificial. As Eidelberg asks, “How is it that ‘nature’ fails to produce one good regime?” Further, this nature fails to produce the sense of obligation needed to sustain a just hierarchy. Eidelberg sees that such Torah incidents as Abraham’s binding of his son Isaac and the severe methods employed during the

conquest of Canaan might easily be cited if one wished to raise questions concerning the justice of God and the Israelites. Accordingly, he argues that “Abraham’s sacrifice . . . teaches us that although man is nothing in relation to God, he is the acme of God’s creation.” As for the destruction of the Canaanites, it was done “to stamp out the pagan practice of *sacrificing the innocent for the sake of the guilty*.” Jewish practice contrasts with the perhaps proto-Machiavellian acts of Plato’s founders. It also contrasts with Christianity, which Eidelberg blames for sanctioning just such a ‘pagan’ sacrifice. “The pagan practice of sacrificing the innocent for the guilty is a form of *aristocide*,” hence egalitarian. In practice,

by eliminating the coherent and comprehensive system of laws of the Torah, Christianity was forced to adopt the patchwork laws of pagan nations, laws which could not but conflict with and eviscerate the unguarded teachings of the Nazarene or his disciples. Hence Christianity was and still is compelled to render unto Caesar the things that are Caesar’s and to God the things that are God’s, when in truth, nothing in a monotheistic universe belongs to Caesar.

The church/state separation leaves Christianity vulnerable to the separation of morality and politics effected by its enemy, Machiavelli. Eidelberg decries the “sacrifice of intellect” required by the Christian doctrine of salvation by faith. “The Book of Truth requires infinitely more than belief or faith”; it requires acts in the form of observance of the commandments. “The suicide of the mind . . . is the final consequence of the mind’s deification.”

Modern science provides a different way to this suicide. Chapters six and seven concern ‘classical’ (i.e., Galilean/Newtonian) and twentieth-century physics, respectively. Galileo preserves Plato’s esteem for mathematics but discards the Platonic *eidos*; “the loss of this upper rung of Plato’s mental hierarchy brings Galileo closer to epistemological democracy.” For in contrast to Plato Galileo believes the universe infinite and irrational, with no natural warrant for distinguishing curved from straight, circumference from center. Relativity or egalitarianism “entered cosmology.” Add Galileo’s antiteleology, subjectivism, and atomism, and we see the grounds for an atheist positivism. Eidelberg calls this an advance, in one sense, because it destroyed “a farrago of Greco-Christian elements which, having fulfilled their historical function of destroying paganism or primitive idolatry, were now preventing mankind from recognizing the only true God.” Newton added an empiricist determinism to this modern brew. Twentieth-century physics in turn counteracted early modern physics. Einstein substitutes a nonmaterialist determinism for Newtonian mechanics. Eidelberg objects that Einstein’s laws “leave no room for contingency or uncertainty”; Einstein “assumes that the universe exists by immanent necessity and not as a result of the will of a Creator.” Relativity theory not only deifies human intellect but overlooks the necessary incompleteness of any mathematical system—a necessity demonstrated by Gödel. It also contradicts the microphysical indeterminacy posited by another branch of contemporary physics, quantum mechanics. For these and other reasons, Eidelberg can insist that physics now suffers from theoretical

disarray, despite spectacular practical successes. He points to the concept of *creatio ex nihilo* as the only remaining solution to the many problems.

Whitehead “admits” the existence of one such problem when he writes that “apart from some notion of ‘imposed law,’ statistical law or ‘the doctrine of immanence provides absolutely no reason why the universe should not be steadily relapsing into lawless chaos.’” Eidelberg goes further, following Zimmerman, and asserts that statistical laws “are not self-sustaining” because, if they were the only laws in operation, “the universe would now be in a state of complete entropy.” *Contra* Einstein, “God *does* play dice with the world, only the dice are ‘loaded.’” This assertion allows Eidelberg to introduce the claims of chapters eight and nine, which concern the human soul as seen in Jews and in non-Jews. Aside from God Himself, what prevents the decline into entropy is human action, insofar as those actions serve God. The human will should serve the divine Will, and the most willful, “stiff-necked” people—the ones best fitted to serve that Will—are Jews. “The creativity of the Jew is *sui generis* and so abundantly manifest as to require no elaboration.” The Jew is “man *par excellence*.” The non-Torah world, by contrast, has sunk into deification of, first, the human mind, then the human will. In its ‘pluralism,’ it now deifies even baser emotions, a suicide of the intellect comparable to that which Eidelberg imputes to Christianity.

Eidelberg returns to Plato for an explanation of this. He advances a Nietzschean interpretation of Socrates’ last words: “I owe a cock to Asclepius” means that life is a disease, an absurdity. When Socrates “told the Athenians that the unexamined life was not worth living, he was, in principle, condemning Athens (and the bulk of mankind) to death. . .” (One might reply that if life is absurd, then Socrates in fact condemned the bulk of mankind *to life*, leaving the philosopher as the one who learns to ‘die.’) “Socrates conquered all his emotions—all save one, the desire for truth.” Having severed this “emotion” from the others, Socrates effectually unleashes them. The artificial constraints he recommends must eventually fail. Only the “discipline of the Torah” provides the necessary restraints on these innocent but indeterminate forces of the soul. The standards for discipline “cannot be determined by categories of reason nor by logical inference from the facts of experience if only because life is infinitely richer than any set of mental concepts or accumulation of empirical data”—an argument opposed to the philosophers’ contention that no legal system can respond sufficiently to the range of human circumstance. In setting standards, the Torah neither suppresses nor indulges the emotions; it guides them to assist men to fulfill “the Torah program for overcoming the cyclicity of nature and the death principle.” Obviously, unaided human reason cannot know the “Infinite Halacha” on which this overcoming depends. As for “emotions” other than the *eros* of intellect, Eidelberg restates the difficulty noticed by Leo Strauss, Stanley Rosen, and others.

It is always the case that the adherent of any reductionist or emotive theory of ideas or mentality runs into the paradox of exempting *his* thought from its own conclusions—an exercise in self-deification, a sort of parody of the Biblical verse, ‘My thoughts are not your thoughts.’

Unfortunately, these ‘gods’ characteristically lack the gracious restraint of *HaShem*.

Eidelberg titles his tenth and final chapter “The Conquest of Death.” In the course of advancing a non-Kabalistic interpretation of the Eden story, he offers some hints on how to interpret the Torah. By eating from the Tree of Knowledge, Adam asserted that he, not God, ‘owned’ the Garden. He thereby subordinated his higher, God-perceiving faculties to his senses or sensuous desires—in the very act of searching for knowledge. In descending to a lower level of existence, man caused tension between his mind and his body, yielding death on the one hand and shame on the other. Had Adam and Eve then eaten from the Tree of Life their misery would have been eternal. As it is, Socrates was right; life, for “anthropocentric man,” is “sickness unto death.” God allowed man to redeem himself by effort. But “to go beyond the finite, but *without leaving the domain of reason*, the Kabala of the Torah is necessary.” It can yield a science whose units of measurement “synthesize quantity and quality” and enable man to “create matter,” overcoming the merely natural principle of conservation-of-energy. *Qedusha*, the “nonphysical energy” that nonetheless can govern the physical world, “distinguishes and separates Israel from the nations.”

Thought’s enemy, complacency, will find no refuge in this book. Eidelberg makes good his promise to challenge “many cherished convictions, skeptical and dogmatic alike.” In doing so, he leaves one wanting to see more detailed and extensive treatment of his theme. This *eros* for completion could easily reach an impasse, however.* In order to fully understand Judaism as Eidelberg represents it, one needs instruction in the esoterics of the Torah and the Talmud. To receive this, one must become Jewish—that is, one must decide the issue in advance, at least provisionally. (Else one must become the greatest dissembler in the world.) The Torah master can thus argue that for all practical purposes the Torah master is to the philosopher what the philosopher says he is to the nonphilosopher: a man who knows both the true life of the mind and the false life, thus enjoying the advantage over men who ‘know’ only the false.

Does God smile?

*Part of the problem arises from the scope of the book. Although he discusses large areas with much depth, Eidelberg must seize the main points, not the nuances. This means that the book’s weaknesses (if they are that) come from its strength, and were unavoidable once Eidelberg chose to give it that strength.

How Does the Constitution Secure Rights? Edited by Robert A. Goldwin and William A. Schambra. (Washington and London: American Enterprise Institute for Public Policy Research, 1985. 125 pp.: cloth, \$13.95; paper, \$5.95.)

WILL MORRISEY

The discrepancy between political speeches extolling rights and the unrighteous deeds of political men has not gone unremarked. Some of this discrepancy results simply from the difference between theory and practice. But much of it does not. Most regimes today fail to defend rights. Their rulers give every sign of unwillingness or inability to do so. Their citizens—and that is scarcely the term—have almost no civil recourse against tyrannical abuses. Because the United States Constitution does not merely mention rights but actually helps to secure them, understanding it can make “a valuable contribution to the safety and happiness of the people of the world.” The editors have selected six essays intended to strengthen that understanding—three by ‘liberals,’ three by ‘conservatives.’

The first two essayists present historical interpretations of Constitutional rights, focusing on Madison’s campaign to add the first ten amendments, the Bill of Rights. Historian Robert A. Rutland writes that Madison “became the father of the Bill of Rights” when hostile voters threatened to reject the Constitution in its original form. Rutland argues that public opinion and the “national and state bills of rights” are reciprocally influential. He goes so far as to call the Constitution “a living, breathing document” for this reason, although his one example of this (that we no longer have slaves) required nothing less than a civil war and an amendment to be effected, as we lived and breathed.

Rutland evidently regards the Bill of Rights and the Fourteenth Amendment (as interpreted by twentieth-century Supreme Court justices) the principal Constitutional guardians of Americans’ rights. Public opinion alone rarely protects our rights adequately, he contends. Abolitionists, religious zealots, suspected Confederate sympathizers, IWWs, pacifists, conscientious objectors, “supporters of the newborn Soviet Union,” labor leaders, and suffragettes were “denied” their civil liberties until the Supreme Court “spread [the] broad umbrella” of the Fourteenth Amendment to cover all public speech and action that do not immediately threaten the peace. To this day, public opinion “can never be ignored” in our republic, but public opinion continues to favor abridgement of rights; accordingly, “the Supreme Court and an executive branch dedicated to the preservation of our individual rights must be strong enough to withstand the vagaries of public opinion,” which “today is not nearly so well informed” as in previous eras. Rutland deploras apathy, indifference, and the Reagan Administration. He remarks a “wide difference between public opinion and the more advanced judicial interpretations of certain civil rights,” although the meaning of ‘advancement’ becomes obscure when the ‘liberal’ faith in progressive enlightenment dims.

The late political scientist Herbert J. Storing contradicts Rutland's prime assumption by denying "the common view that the heart of American liberty is to be found in the Bill of Rights." In his campaign for the Bill of Rights, Madison intended to seal the Antifederalists' defeat by separating them from "the large group of common people whose opposition did rest, not on fundamental hostility to the basic design of the Constitution, but on the broad fear that individual liberties were not sufficiently protected." Storing doubts that the Bill of Rights makes Americans' rights any more secure. Without it, "our courts would probably have developed a kind of common law of individual rights to help to test and limit governmental power."

To use the Bill of Rights as a "set of maxims to which people might rally" is to risk "undermin[ing] stable and effective government." The Federalists identified "the main political business of the American people" not as *self-protection* against political power but as *self-government*. "Even rational and well-constituted governments need and deserve a presumption of legitimacy and permanence," Storing suggests, echoing Madison. Persistent recurrence to the Bill of Rights as if it were a statement of maxims or 'first principles' can interfere with this presumption, and thus with the practical business of republican self-government. Accordingly, the Bill of Rights comes "at the tail" of the Constitution, not the beginning.

The Bill of Rights provides a fitting close to the parenthesis around the Constitution that the Preamble opens. But the substance is a design of government with powers to act and a structure arranged to make it act wisely and responsibly. It is in that design, not its preamble or its epilogue, that the security of American civil and political liberty lies.

One might even infer that Storing suspects some enthusiasts of the First Amendment go so far as to use it to further amend the Constitution without popular consent.

The second two essayists discuss contemporary ways of interpreting the Constitution. Law scholar Owen M. Fiss contends, first, that "rights are not premises, but conclusions" emerging "through a process of trying to give concrete meaning and expression to values embodied in an authoritative legal text," and second, that "a new form of constitutional adjudication has emerged," coinciding with a newly-emerged set of rights. Called "structural reform," this form of adjudication assumes that "the operations of large-scale organizations" threaten "our constitutional values" more formidably than individuals do. It further assumes that these organizations must be restructured, an assumption "reflect[ing] a healthy skepticism about the existing distribution of power and privilege in American society." The reformers intend to "create a new status quo." Their enterprise "requires a measure of activity on the part of the judge that is at odds with the picture of him as a passive umpire, simply choosing between two neighbors." The judge now "becomes the manager of a reconstructive enterprise." Fiss

charges that the older “dispute resolution” model of judicial conduct “begin[s] with indifference toward public values or ignorance of them.” He does not substantiate this charge.

A familiar objection to such vigorous activity by judges is the rhetorical question, ‘Who elected *them*?’ Fiss replies that judges and courts form part of our political system, which is based upon consent. Judges’ authority rests not on “some personal moral expertise, of which they have none, but on the process that limits their exercise of power and constitutes the method by which a public morality must be construed.” This process involves dialogue, responsibility, and independence. One might note that although the power bringing independence also brings responsibility—obviously, the more powerful you are the more you are responsible for—it does not of course bring the responsibility meant by the phrase ‘a sense of responsibility.’ Further, a keen sense of responsibility can yield different, even opposite, results depending upon the public morality a judge derives from his authoritative legal text. Fiss himself suggests some of this by conceding that the judiciary itself becomes bureaucratized—*itself* becomes one of those dangerous, large-scale organizations—when given so much to do. Worse, “the danger is ever present that judges will temper their idealism and their commitment to justice by what is realistic.” Fiss colors the picture darkly: “They will negotiate [he warns]; they will bargain; they will become adaptive.” That is to say, having become politicized, judges get political.

Political scientist Walter Berns considers current notions of judicial conduct to be unusual, even irregular and eccentric. Under the Constitution, judges “owe their independence to the framers’ judgment that only with it could they effectively exercise the power that by natural right belongs to someone else, the constituting people” who ordain, establish, and amend the Constitution. Judges today nonetheless “create rights,” doing so “openly and avowedly,” using the Fourteenth Amendment as if it empowered the courts instead of Congress to provide the substance of privileges and immunities. Until the 1925 case *Gitlow v. New York*, the Bill of Rights and the Fourteenth Amendment had not been conjoined. But subsequent justices have made up for lost time.

Far from commending ‘idealism,’ the American founders sought “to devise a system in which moral differences would not become political issues.” The founders, Berns argues, conceived of rights in the modern way, as natural rights discovered in a nature with no *telos* except self-preservation and with such subsidiary rights (notably liberty) as self-preservation entails. Without spurning declarations of rights, the founders never supposed mere declarations sufficient. The defense of natural rights requires an artificial structure “designed to ensure that the country will be governed not by simple majorities but by constitutional majorities, majorities that respect constitutional limitations that are defined by private rights.” This defense also requires another kind of artificial structure, a civil society sufficiently extensive and commercial to contain diverse interests, none strong or fanatical enough to dominate the others. While not noble, this

“great modern project” is “not ignoble”; it encourages liberty, prevents tyranny. Berns cautions that “while rights, properly understood, can be secured, not all wants can be satisfied.” These wants include the ignoble wants of criminals, but they also include some of the noble wants of moralists. Berns tempts us to think the latter at least as dangerous as the former.

The assertion that human beings have not only the right to eat but the right to be fed combines the ‘low’ concern for survival with the ‘high’ language of ‘idealism’ in a manner that may be peculiar to our time. Few moralists before now could regard *governmental* alleviation of hunger as a superior moral undertaking. Charity has earned praise for centuries, but enforced charity, charity as a demand based upon “subsistence rights,” appears mostly on recent lists of moral goods. Political scientist Henry Shue praises a document called the “International Bill of Rights.” The “core rights” set forth therein are rights to “minimum economic security.” Shue emphasizes the obligatory rather than the libertarian character of rights; “the whole point of having rights is to limit the liberty of other people by imposing duties,” justifiable demands, upon them. Having the right to life, for example, means you can justifiably demand that I refrain from killing you. “Subsistence rights” extend the right to life to contemporary circumstances, wherein human beings control nature to a larger degree than ever before. Famine is no longer so much an act of nature as an act of men; “specification of sensible, well-informed principles for the allocation of responsibility is, I think, one of the central tasks of contemporary political philosophy.”

Shue criticizes the Reagan Administration’s replacement of “human rights” with “political rights” that foster “cold war goals.” He charges the Administration with hypocrisy because, he claims, it overlooks human rights abuses by such allies as Turkey and Marcos’ Philippines while condemning abuses in the Soviet bloc. “Genuine subsistence rights [are] betrayed in the pursuit of illusory ideological gains” —illusory because the Soviets see our hypocrisy and therefore will not change their own unjust tune. Leaving aside the question of whether the Reagan Administration actually has overlooked human rights abuses by allies, and leaving aside the pretty claim that the Soviets might repent if only they thought us sincere, it must be said that Shue here fails to argue consistently. If, given the extent to which men have conquered nature, famine now ranks as a political crime — Stalin in the 1930s and the Marxist rulers of Ethiopia today serve as obvious examples of this — then one cannot ignore the political or “ideological” reasons for the decision to cause famine. Attempting to separate “human rights” from “political rights” makes no sense if human beings are political animals who act differently in regard to “subsistence rights” when their conceptions of “political rights” differ. If commercial republics rarely or never deliberately cause famine, and if other regimes do, then the issue of political rights *is* an issue of human rights. If, moreover, certain kinds of regimes that spurn commercial republicanism (e.g., communist regimes) wield considerably more power than certain other kinds of regimes that also spurn commercial republicanism (e.g.,

right-wing dictatorships) then there is no hypocrisy or even inconsistency in concentrating one's public attention on the former and not on the latter. The decision to do so involves prudential deliberation and may be called into question by prudential deliberation. But to make that decision *primarily* a matter of rights undermines the exercise of the practical judgment that defends rights.

John Locke might associate "subsistence rights" as Shue conceives them with patriarchalism. For example, Confucius tells the Chinese emperor to feed the people, who are his 'children.' The absence of state-guaranteed "subsistence rights," as distinguished from the natural right to consume the fruits of one's labor, perhaps reflects Locke's reservations about the ruler-as-father, reservations originating in the philosopher's dislike of tyranny and his esteem for human industry. In the volume's most substantial essay, Nathan Tarcov examines the conception of rights seen in the Declaration of Independence and the Constitution. He finds it more individualistic than Shue does, but not simply individualistic.

Tarcov observes that the Declaration of Independence speaks of both individual and collective rights. But the latter exist to secure the former. A "people," in the Declaration, does not mean an organic entity, a race or nationality. Shared sentiment helps constitute a people, but that is not enough. A people constitutes itself by its acts: emigration to a new land, the acquisition of that land by labor and by the risk of individuals' lives and fortunes.

The acts of naturally free individuals, in particular the expenditure of life, liberty, and property that by nature belong to each of them, are what constitute a people. The Declaration recapitulates and reconfirms that ultra-Lockean origin by its final pledge of signed individuals' lives, fortunes, and sacred honor.

Although Tarcov is surely right to call this definition of a "people" ultra-Lockean, one should also notice that the Declaration's closing formulation—lives, fortunes, and sacred honor—differs significantly from its opening formulation—life, liberty, and the pursuit of happiness. Go so far as to concede that the pursuit of happiness means the attempt to acquire property (a concession that decisively confirms the Declaration's Lockean character, although it is not a concession that need be made), and you still cannot accurately contend that "sacred honor" makes sense in Lockean terms. The sanctity of honor sounds far more aristocratic than anything Locke endorses, and more careful research is needed to fix the meaning of this evocative phrase.

This notwithstanding, Tarcov clearly shows the relation of individuality to collectivity in the Declaration. The Constitution, he argues, embodies an analogous relation between the country and humanity. Universalist but humanitarian, Constitutional rights inhere in human nature itself "but their security is primarily something each people must accomplish for itself." Locke teaches that "civil society has the right to secure the rights only of those who have consented to it"; accordingly, "we have believed that American patriotism is the most effective form of philanthropy." American nationhood, then, directly serves the rights of the individuals who consent to participate in it while indirectly serving (by exam-

ple) the vast numbers of human beings who cannot participate in it. Against those who contend that the Fourteenth and Fifteenth amendments fundamentally alter the Constitution's moderate individualism, Tarcov observes that "the amended Constitution protects the rights of individuals against violation on the basis of their race, not rights of racial or ethnic groups as units"; "the interests of classes derive from the more fundamental property rights of individuals." *Constitutional* majorities rule not as classes (as the Athenian *demos* did) but as shifting coalitions of individuals and interests whose views are refined and enlarged by their elected representatives. Extensive use of the power of judicial review to effect policy thus undermines the very constitutionalism it depends upon—by stripping constitutional majorities of their proper function.

Tarcov distinguishes the natural rights of individuals protected by the Constitution from natural right as propounded by classical political philosophers. Classic natural right involves the distribution of goods, the direct cultivation of virtues, the fostering of political unity, and the teaching of truth. The classical *politeia*

. . . is the form taken by a political community, determined by who rules it. The dominant characteristic of the ruling part determines both the political goal of the whole regime and the personal goals of the individuals in it. This conception reflects the view that political rule is natural. The American conception of a constitution, in contrast, is that of a fundamental law, preferably written in a single document, understood as the expression of the will of the whole people. The Constitution grants powers of government from the natural right of individuals, not so that some can rule others or form their goals, but so that the remaining rights of all can be more secure.

The Constitution does not constitute a classical timocracy (*Federalist #8* explicitly contrasts the agricultural and commercial pursuits of the American states with the ancient republic, a "nation of soldiers"), an oligarchy ("Securing property rights is of special advantage not only to the wealthy but to those who would acquire wealth"), or a classical democracy.

Tarcov does not mean that the Constitution recommends blinding ourselves to the question of the desirability of our several desires. While securing rights, the Constitution is "compelled to distinguish lawful from lawless desires."

Exclusive reliance on rights generates irritable litigiousness and empty yearning. Our public discourse is impoverished if we only invoke our rights and never debate what is good for us, if we only assert our right to pursue happiness and never discuss what would make us happy.

In protecting the right to speak by means that reward civility and rationality, the Constitution subtly orients some American souls toward distinctively human happiness and away from either the irritable self-righteousness of men who mistake themselves for gods or the appetitive yearnings of men who mistake themselves for beasts. Both these mistakes incline men to tyranny.