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Dan Edelstein, *On the Spirit of Rights*. Chicago: University of Chicago Press, 2018. 326 pp. Notes, selected bibliography, and index. \$40.00 U.S. (hb). ISBN 9780226588988; \$29.99 U.S. (pb). ISBN 978-0226794303.

Review by Andrew Pendakis, Brock University.

Though *On the Spirit of Rights* sometimes reads like a history of European rights discourse, one that makes contact with all of the usual reference points (the monarchomachs, seventeenth-century English political philosophy, American and French republicanism, etc.) in a roughly diachronic manner, Edelstein's work is less a detailed genealogy of the emergence of modern right than it is a new way of internally organizing the tradition. Rather than focusing on the direct overlap between philosophies of right and the usual distinctions between political systems (republican, constitutionalist, or absolutist), or on the relations established within or between schools of thought (the Physiocrats, Huguenot resistance theory, etc.), Edelstein looks instead at what he calls "rights regimes" for the way they cut across and through the existing categories and reveal similarities that might otherwise remain hidden from view (p. 1). Though he moves chronologically through the local logics at work in particular traditions, the real story is the gravity exerted on thought by the existence of these large, sunken rights regimes that ground political philosophies, but are rarely noticed by them. This is a history of ideas, then, informed by a kind of archeological structuralism: Edelstein is careful to look for differences and breaks, but he is attentive as well to unexpected continuities: "In culture, as in plate tectonics," he writes, "the tremors are only half the story; the other half are the plates themselves" (p. 7).

The interesting innovation at the heart of this book is a tripartite schema in which rights regimes are seen to mostly fall into one of three types: preservation, transfer, or abridgment. Though there is no one-to-one correspondence between a rights regime and its politics, each can be said to harbor tendencies: preservation regimes tend to be constitutionalist, liberal, or libertarian; abridgment regimes tend to be conservative or absolutist, though they can also manifest as republican or collectivist, linked to what J. L. Talmon once called "totalitarian democracy" (a tradition the latter saw as running from Rousseau through Robespierre, to Babeuf, Blanqui and even Marx).<sup>[1]</sup> The distinction on which the difference between these regimes hinges has to do with the way each regime thinks right across the seam separating nature from politics (or sometimes, as in natural republicanism or libertarian utopianism, whether or not this seam even exists). As Edelstein puts it: "the bone of contention in these quarrels was not whether humans possessed natural rights per se"; rather, the "real debate was what happened to these rights in political society" (p. 2). For preservation regimes (he cites Toland, Blackstone and Jefferson as models), natural rights are declared to hold universally and are preserved intact in the shift from

the state of nature to civil society. It is for this reason that preservation regimes have often been used to preempt or resist political absolutism: they avow, as the Huguenots did, a naturally occurring right to freedoms unnaturally abridged by the sovereign or state. They've also, however, been used—and this point is mentioned but not sufficiently explored by Edelstein—to naturalize liberalism, and they are at the root of the fundamentalist, free-market perspectives found both in neoclassical economics and Hayekian neoliberalism.

For transfer regimes, these rights are not relayed unchanged in the transition to civil society but altered, mediated, and re-constructed: they have often been used, as in Locke, to preserve a right to active resistance, though this same regime in Spinoza culminated in a diametrically opposed position. What Edelstein calls “abridgement regimes” are those that see right as definitively left at the door of the political: for these theorists, the peace and quiet made possible by civil society begin precisely where naturally occurring rights to all end (here he cites Hobbes, Grotius and Pufendorf as models). Though abridgement can tend in the direction of fetishized law and order, it can also, as in Communist regimes, be seen from within as a path to a more vigorous or intensified collectivist conception of people's democracy, one that operates on the outskirts of liberal normativity in the name of a more perfect union between the people and the power of the state. The chronological axis of the book works as an account of how inchoate preservation regimes—linked to religious struggles in France in the 1500s and to the English Civil War a century later—grounded the possibility of resistance or revolt in the face of absolutism only to have abridgement and transfer regimes evolve in response to their perceived blind-spots and dangers. The great revolutionary projects of the eighteenth century in America and France returned to preservationist models, but with their theological origins slightly muted and a deeper sense for the political and legal consequences of the fine print.

Along the path of his argument we get some novel readings of specific thinkers within the Western rights tradition. By placing Locke into the category of the transfer regime, Edelstein breaks with libertarian readings, in which Locke's commonwealth functions solely as a means to the end of preserving natural rights to property. Instead, he reminds us that, for Locke, the law does not simply enshrine already existing rights to property, but effectively invents them insofar as property as such presumes the existence of secure, legal possession. In addition to this, Locke never envisions the state as exclusively concerned with the protection of private property, but also always the public good (even granting the right of a legislative to justly tax an estate). Edelstein's reading of Spinoza is a welcome corrective to recent interpretations in which Spinoza is styled as a radical democrat and a philosopher of freedom. He rightly points out that in Spinoza's ideal state right is transferred wholly to the sovereign power and that, though this sovereign power is ideally democratically vetted, the citizen or subject is expected to obey absolutely. Not even Hobbes goes as far as Spinoza in delegitimizing the right of the subject to defend itself (indeed, in Hobbes, the person slated for execution by the state has the right to flee or resist). Edelstein also makes an interesting case for the paradoxical role played by English common law, not simply natural law theory, in the formation of the ideas of the American revolutionaries: Locke only edged out the *Magna Carta* once it became clear the latter couldn't be used to ground a full-blown rebellion. Edelstein's work also sheds light on a number of important, but neglected figures in the rights tradition, including James Craufurd, Matthew Tindal, Jean-Jacques Burlamaqui, Le Mercier, Jacques Abbadie, and Jean Domat. This eye to the internal multiplicity of the tradition is archeologically useful, especially in the light of the often drearily theological quality that characterizes so much human rights discourse in contemporary liberal societies. Archeology is here, as always, the enemy of fundamentalism.

A few points of criticism. First, the book is really a history of ideas, and from that angle, tends to frame the development of thought, despite Edelstein's own awareness of the problem, as something happening on the inside of a closed circle called philosophy. Though he does ground ideas in specific times and places, connecting transformations in the discourse to events outside it, these sections seem baggier than those in which he's simply describing the clockwork interior of a thinker's system. A robust cultural materialist analysis would have more to say about the evolution of modern rights discourse in the light of the social forces, structures, and class formations by which it is necessarily conditioned. Capitalism, patriarchy, racial slavery, and colonialism, all appear from time to time, but they feel adjacent to the discourse not constitutive of it. Second, the book makes no attempt to skeptically address the limits of modern rights discourse nor the atrocities and abuses that continue to be abetted by a world grounded in naturalized liberal right. The text is so deeply engrossed by the sub-discipline of rights discourse that it forecloses any real engagement with the traditions of thought which vigorously contest it. Bouncing his readings off of the criticisms posed by materialists like Marx or Nietzsche (or by twentieth-century critical theorists like Foucault, Agamben, and Badiou) would have enriched and deepened the project. Though the book is admirably aware of the ways natural right can buttress free-market theology, it mostly connects violence and the possibility of atrocity not to the freedoms securitized by inviolable private rights, but to the regimes which imperiously curtail them. The spectre that haunts this book is that of "political violence," a threat Edelstein links to the authoritarian dimensions of the French constitution (p. 142). It was the latter's focus on collective rights at the expense of individual ones that made it prone to violence, making possible not just Thermidor, but its many twentieth-century totalitarian children. The claim that the French experiment was more prone to violence than its American counterpart has always struck me as short-sighted. It works only on the condition that we stop the clocks of these revolutions arbitrarily at 1794. The full account of the violence of American constitutionalism would have to take into consideration the ruinous domestic legacy of its anti-statism, and the grim costs of its many imperialist wars, wars undertaken, again and again, in the name of inalienable rights to property and freedom. Though much of what is happening in our moment, the birth of Trumpism, for example, calls precisely for a renewed attentiveness to individual rights and freedoms, perhaps the greatest calamity of our time--the slow violence of climate change--lies not in the curtailment of rights, but in their blind naturalization.

*On The Spirit of Rights* is a brilliant book, one that is impressively erudite and meticulously researched. It should, however, be read alongside Domenico Losurdo's *Liberalism* or Robin Blackburn's *American Crucible: Slavery, Emancipation and Human Rights*, both of which nicely offset from a materialist perspective the quiet liberal idealism at the heart of Edelstein's book.

## NOTES

[1] J. L., Talmon, *The Origins of Totalitarian Democracy* (London: Secker & Warburg, 1952).

[2] Domenico Losurdo, *Liberalism* (London: Verso, 2014); Robin Blackburn, *The American Crucible, Slavery, Emancipation, and Human Rights* (London: Verso, 2013).

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