

Book Reviews

DEMOCRACY AND PHILOSOPHY

The four studies reported on below are united upon the proposition that the American republic is in jeopardy because the principles upon which it is based are in disorder. Each author is concerned with the moral-philosophical conditions of a healthy democracy, or, what is the equivalent in their perspective, the conditions of a virtuous democracy.

Though each book has a different focus, the overriding concern expressed in each is to provide the philosophical justification for self-restraint as the primary condition of a virtuous, stable democracy. They argue that the philosophy of natural rights that provides the framework for the Declaration of Independence and the Constitution of 1789 is sound though sadly ignored or repudiated in our day. The distempers to which democracies are susceptible are moderated, they contend, not by the addition of "more democracy" (to recall the injunction of Al Smith) but by such "auxiliary precautions" as Madison defended in *Federalist* 10. But Madison's institutional safeguards must in the end be undergirded by the principles that justify and make sense of them. This is the task that our authors set for themselves.

But this point raises a fundamental problem in the understanding of democracy, which will be developed later in this essay. For the moment let me anticipate that discussion with the following questions. Were Madison's "auxiliary precautions" meant to rest permanently upon the principles associated with the natural rights philosophy, or were they understood to be capable of standing on their own even after the original principles fell into disuse? Perhaps we may go further and ask if the institutions of government as established by the Constitution were not designed as they were *because* the original principles would inevitably be forgotten?

I

Of the four works, Professor Berns's *The First Amendment and the Future of American Democracy* (New York: Basic Books, 1976) is the most controversial, for it disputes the reigning opinions and case law on the First Amendment as these have developed over the past 50 years. In addressing the sources of self-restraint in the American democracy Berns contends that we have lost our way because we—especially the Supreme Court—have forgotten the answers to the key questions that confront a republican form of government.

Why is free speech good? The Court doesn't know. Was free speech intended to serve republican government and only republican government? The Court doesn't care what the original intention was. Is there a connection between decent public discourse and decent government? The Court doesn't even bother to wonder. Is there a connection between the privacy of sexual behavior and the family and, therefore, with republican government? For a period that may prove to be decisive, the Court did not even acknowledge the relevance of the question. Is there a connection between morality and republican government—or, in Tocqueville's formulation, can liberty govern without religious faith? Whatever the answer, the Constitution is now said to have built an impregnable wall between church and state. [P. 237]

According to Berns, what has been forgotten or misconstrued is the subtle relationship, as the Founders understood it, between religion and politics. Following a careful study of the debates in the First Congress and of the writings of Madison, Jefferson, Washington, and Tocqueville, Berns concludes that the First Amendment was understood to provide for the separation of church and state as a means for avoiding the divisive religious conflict that had so often disturbed prior political orders, including those of Puritan America. The First Amendment was not originally understood, however, to require the *indifference* of the government to all religion—the present interpretation of the Court. The separation clause was not intended to set up a wall of separation between church and state, but to prevent the state from establishing a national church and a national religious orthodoxy.

The Founders were not indifferent to religion and did not intend the new government to be indifferent to religious belief for a very plain reason: the health of a republican form of government is dependent upon belief in a God who troubles himself with the way people conduct their lives. A republican government promotes, to the extent necessary for assuring the self-restraint of its citizens, a belief in eternal reward or punishment for the acts one takes upon this earth. Berns finds in Washington's Farewell Address a representative statement of this point:

Of all the dispositions and habits which lead to political prosperity, religion and morality are indispensable supports. In vain would that man claim the tribute of patriotism who should labor to subvert these great pillars of human happiness, these firmest props of the duties of men and citizens. The mere politician, equally with the pious man, ought to respect and to cherish them. A volume could not trace all their connections with private and public felicity. Let it simply be asked where is the security for property, for reputation, for life, if the sense of religious obligation desert the oaths, which are the instruments of investigation in courts of justice? And let us with caution indulge the supposition that morality can be maintained without religion. Whatever

may be conceded to the influence of refined education on minds of peculiar structure, reason and experience both forbid us to expect that national morality can prevail in exclusion of religious principle. [P. 13]

As Professor Berns concludes, "Government cannot afford to be neutral 'between believers and nonbelievers'; good government depends on the existence of a certain kind of believer because there is, or was thought to be, a connection between religious belief and the moral character required to restrain the passions inimical to liberty" (pp. 14-15).

But if religious piety was understood to be a source of restraint upon the distemperring passions of the people, the Founders were equally aware that it can also be a source of ruinous division among the citizens. The significance of this point constitutes what Berns calls "the religious problem." For the success of republican government the framers understood that it is necessary for religious orthodoxy to assume a wholly private character. As Jefferson argued in his *Notes on the State of Virginia*, the law should not entitle him to take injury when his neighbor affirms that there are twenty gods, or no God; "It neither picks my pocket nor breaks my leg." As Jefferson argued further in the *Notes*, it is salutary on political grounds that there be religious diversity because "several sects perform the office of a *census morum* over each other," a point reaffirmed by Madison in *Federalist* 51. Thus, there is a twofold teaching in the Founders' view of religion and its connection to the well-being of a republican form of government: the government must be neutral between the claims advanced by the "multiplicity of sects," but it must also be cautious against actions that would undermine the foundation of religious piety, because piety subserves the cause of liberty. As Berns, quoting Tocqueville, says, when "any religion has struck its roots deep into a democracy, beware that you do not disturb it; but watch it carefully, as the most precious bequest of aristocratic ages" (p. 34).

Berns's focus upon the Founders' understanding of religion highlights their concern that religion be directed to the needs of the civil order by its role in promoting the moral dispositions and habits upon which the civil order rests. None of this is to deny that they were genuinely concerned with the rights of conscience. The observations respecting the civil role of religion bring us to the second focus of Berns's argument: that the Declaration of Independence and the Constitution incorporate a *political* orthodoxy or creed, which is rooted in the philosophy of natural rights and which may be enforced as prudence dictates.

Against this argument he ranges the celebrated opinions of Justice Holmes. Dissenting in the *Abrams* case, Holmes observed that

when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas—that the best text of truth is the power of the thought

to get itself accepted in the competition of the market; and that truth is the only ground upon which their wishes safely can be carried out. That, at any rate, is the theory of our Constitution. [Cited in Berns, p. 58]

The question raised by Berns's argument that the American political order is grounded upon a political creed, the elements of which Jefferson considered self-evident and which no one in a position to modify the Declaration of Independence troubled himself to deny, is whether the First Amendment may properly be construed to withhold protection to the speaker or the association that assaults this creed. Does the original understanding of the First Amendment confirm the libertarian interpretation generally put upon it today? Berns says no. Reduced to its essentials, his argument in defense of a nonlibertarian understanding is this: as the Constitution, including its amendments, rests upon and elaborates a political creed—that is, the natural rights philosophy as set out in the Declaration of Independence—conformity to the Constitution entails adherence not only to its enumerated clauses but to the philosophy beneath it. Thus, while groups that are dedicated to the overthrow or abolition of the Constitution (e.g., Marxist communists or Nazis) may be tolerated—should be tolerated—as long as they are weak, the tolerance is a matter of *privilege* under the First Amendment rather than *right*. (For a similar argument, see George Anastaplo's essay "Liberty and Equality" in *Human Being and Citizen*.)

Holmes asserted in the *Gitlow* case that "If, in the long run, the beliefs expressed in proletarian dictatorship are destined to be accepted by the dominant forces of the community the only meaning of free speech is that they should be given their chance and have their way (cited in Berns, p. 158). As Berns points out, Holmes could consistently hold to this interpretation of the First Amendment only if he maintained that there is no necessary connection between the freedoms of the First Amendment and the republican form of government as established in the Constitution proper (and explicitly guaranteed to the states in article 4, section 4). In other words, Holmes's argument conveys a charge that the First Amendment is inconsistent with the Constitution of which it is a part.

While Berns is concerned with recovering the original and proper understanding of the role of the First Amendment and of the rights it protects in the furtherance of republican government, Paul Eidelberg's *On the Silence of the Declaration of Independence* (Amherst: University of Massachusetts Press, 1976) is an attempt to explicate the unspoken assumptions that inform the natural rights philosophy of the Declaration of Independence. "The major purpose of this study, he says, "is to incorporate the underlying principles of the Declaration of Independence into a new philosophical framework that will enable thoughtful citizens and statesmen to use those

principles as criteria for analyzing and evaluating contemporary political thought and practice (pp. xiv–xv).

Eidelberg contends that the natural rights philosophy points in two directions simultaneously. Because it upholds the supremacy of reason over will, the philosophy of the Declaration does not justify the existence of rights on the strength of consent or agreement. On the other hand, because the Founders adhered to Locke's argument respecting equality ("there being nothing more evident, than that Creatures of the same species and rank promiscuously born to all the same advantages of Nature, and the use of the same faculties, should also be equal one amongst another without Subordination or Subjection," *Second Treatise of Government*, para. 4), they believed that government must be based upon consent and inferred that democracy was most likely to follow upon the principle of consent.

Professor Eidelberg's interpretation draws upon the classical distinction between nature and convention. Nature, he argues, determines the ends of human (i.e., social) existence, and these ends are contained in the very terms by which Eidelberg defines man: *homo rationalis et civilis*. But though the ends are self-evident and not subject to haggling (as is clear from the vigor of Jefferson's words), they are not self-effecting—which is to say, the Declaration is not as such an instrument of government. The determination of the means for effecting the ends of government as set out in the Declaration was left to the Articles of Confederation and later to the constitutional convention of 1787.

There is a further element of the double nature of the Declaration. While it implies democracy as a form of government, the philosophy of the Declaration rests upon an aristocratic view of man. The following will serve to illuminate Eidelberg's point. The signers of the Declaration in closing the document mutually pledged their lives, fortunes, and sacred honor in the furtherance of its purposes—not their reputations, but their sacred honor. The very term for Eidelberg is rooted in aristocratic values. Not their reputations did they pledge—reputation is a thing dependent upon the opinions of others—but their honor; and honor consists in holding to standards that are independent of the judgments of majorities, even should a majority accept the standards of honor at any given moment. Because the demands of honor are great, only a few will possess the strength to meet them. Thus the distinction between the few and the many. Because the Declaration professes equal right, it is undeniably a democratic statement; because the superintendence of rights falls to the few, the Declaration is an aristocratic statement as well.

The chapter entitled "The Declaration Applied: Relativism vs. Universalism" brings Eidelberg to the major concern of Berns's study, the rejection of moral relativism as a mode of thought historically and philosophically inconsistent with the nature of the American democracy and therefore dangerous to its well-being. According to Eidelberg, relativism reduced to

its logical consequences amounts to the principle that might makes right. This is the counsel of Thrasymachus. However,

The Declaration silently yet eloquently affirms the power of reason to apprehend universal moral truths or standards by which to determine whether any form of government is just or unjust. Relativism denies this power of reason. It thereby denies any moral justification for the Revolution or indeed for any revolution. [P. 30]

The general discussion of relativism concludes with the following:

At this point it must be made clear that the preceding discussion, as well as what is to follow, is not intended as a philosophical refutation of relativism. Relativism may or may not be true. But like Nietzsche, I believe I have shown that relativism is deadly. [P. 36]

The reference to Nietzsche is from his *Use and Abuse of History*. It is quite probable that among the lines Professor Eidelberg had in mind in referring to Nietzsche are these:

The historical [i.e., historicist or relativist] training of our critics prevents their having an influence in the true sense—an influence on life and action. They put their blotting paper on the blackest writing, and their thick brushes over the most graceful designs; these they call "correction"—and that is all. Their critical pens never cease to fly, for they have lost power over them; they are driven by the pens instead of driving them. The weakness of modern personality comes out well in the measureless overflow of criticism, in the want of self-mastery, and in what the Romans called *impotentia*.¹

Relativism may or may not be true, but it is deadly. Does Eidelberg mean to suggest that uncertainty over the philosophical status of relativism is among the silences of the Declaration? Perhaps its gravest?

George Anastaplo's *Human Being and Citizen* (Chicago: Swallow Press, 1975) and Harry Jaffa's *The Conditions of Freedom* (Baltimore: Johns Hopkins University Press, 1975) are each collections of essays written in the 1960s and '70s on a variety of topics. Thus, while their works address the theoretical foundations of democracy as do Berns's and Eidelberg's, theirs do so in a more discursive manner. Included among Anastaplo's essays are discussions of Plato's *Apology of Socrates* and *Crito*, natural right and American jurisprudence, the relationship between liberty and equality and between law and morality, as well as more topical pieces on obscenity, Quebec separatism, Vietnam, and the role of philosophy in solving problems of race in this country. The essays by Jaffa have been drawn together from a number of previous publications. For convenience they may be divided into discussion of people—Leo Strauss, Aristotle, Skakespeare's Lear, Jeffer-

son, Thoreau and Lincoln, Tom Sawyer—and principles—equality, federalism, freedom and slavery. Because Anastaplo's and Jaffa's essays encompass such a wide variety of topics, it is impossible here to do more than summarize the main points that emerge from the studies as a whole.

Each takes his bearings from Madison's understanding of the sources of instability in democratic regimes, and each fully accepts the need for what Madison called "republican remed[ies] for the diseases most incident to republican government" (*Federalist* 10). The American democracy is founded not only upon the equal natural right of all men and women but also, like all democracies, upon the passion for equality of condition or desert. Thus, American politics periodically erupts over the issue of wealth and how to redistribute it or the issue of political influence and how to redistribute it. In either case, it is greater equality in the material conditions of life that is sought.²

Several of the essays treat the harmful effects caused by our diminishing capacity for distinguishing liberty from license and virtue from comfortable self-preservation. See Anastaplo, "Law and Morality," "Liberty and Equality," "Obscenity and Common Sense"; Jaffa, "Amoral America and the Liberal Dilemma." Another way of stating our authors' concern is this: democracy is threatened by the ascendancy of will over reason as the arbiter of public policy, even as Thrasymachus asserted must be the case in any regime.

In sum, all four of our authors suggest that the greatest debility to which our political order is subject is a weakness for bad ideas. The above infirmities are really incidences of the waning of philosophy in the forward movement of democracy. Thus, the natural rights philosophy that lies at the origins of the American democracy is being hollowed out from the center by the effects of positivism and value relativism. It is increasingly difficult for citizens to believe anymore in the philosophical foundations of the American Republic because "the best and brightest" do not. Whereas democracy used to be considered the regime whose citizens believed in a great deal (most especially, the reality of natural right and natural justice), it is now held to be the regime whose citizens believe in nothing, or in nothing in particular. This is the basis for the characterization of democracy as mere method—and not a way of life, as the Founders thought. See Anastaplo, "Natural Right and the American Lawyer," "In Search of the Soulless Self," "Obscenity and Common Sense," and "Race, Law and Civilization"; and Jaffa, "Political Obligation and the American Political Tradition," "Reflections on Thoreau and Lincoln," and "What is Equality?"

It is interesting to observe that the positivist defense of democracy as the regime most suitable to a body of citizens without a public philosophy (democracy being pure method), bears a resemblance to Plato's characterization of democracy in book 8 of the *Republic*. For Plato, democracy was that regime which embodies, not *a* way of life, but *all* ways of life, a regime

whose members believe in everything or in nothing. Plato concluded, however, in profound disagreement with contemporary positivists, that this condition would generate anarchy, followed close on by tyranny.

II

It is enough to know that our authors are philosophers, or students of philosophy (as they would with modesty insist of themselves), to know that certain features of the American democracy as it has developed leave them apprehensive about its future. I am not engaging here in sniping. It is not being suggested that our authors are utopian ideologues in whom burns the lust for nothing less than the whole loaf. Anyone even vaguely aware of their other writings knows that they do not give themselves over to an excess of theory or aspiration.

Neither am I recalling the argument of Daniel Boorstin that the perpetuation of our political institutions depends less upon a coherent political philosophy than upon the pluralist tendencies of American politics. "The tendency to abstract the principles of political life," he said, "may sharpen issues for the political philosopher. It becomes idolatry when it provides statesmen or a people with a blueprint for their society. The characteristic tyrannies of our age—nazism, fascism, and communism—have expressed precisely this idolatry. They justify their outrages because their 'philosophies' require them."³

Rather, my point is this. There is an unavoidable tension between the philosopher and the democrat on the strength of which the two can never be reconciled. The basis of this tension is assignable, not to the real or imagined pretensions to wisdom among philosophers, but to the tendency among the man of democratic sentiments to reject as a matter of principle the very possibility of wisdom.⁴ The democrat simply does not believe in Truth, whereas the philosopher is animated by the search for nothing else. It is useful here to recall the argument of Plato to see more clearly the antagonism between philosophy and democracy. Now it must be granted that Plato's characterization of democracy exaggerates (deliberately) the deficiencies of the democratic man. Nonetheless, his argument remains cogent.

The distinctive trait of the democratic man is that there is no principle in his soul on the basis of which he organizes his life.

When he is told that some pleasures should be sought and valued as arising from desires of a higher order, others chastised and enslaved because the desires are base, he will shut the gates of the citadel against the messengers of truth, shaking his head and declaring that one appetite is as good as another and all must have their equal rights. So he spends his days indulging the pleasure of the moment, now intoxicated with wine and music, and then taking a spare diet and drinking nothing but water; one day in hard training, the next doing nothing at all, the

third apparently immersed in study. Every now and then he takes a part in politics, leaping to his feet to say or do whatever comes into his head. Or he will set out to rival someone he admires, a soldier it may be, or, if the fancy takes him, a man of business. His life is subject to no order or restraint, and he has no wish to change an existence which he calls pleasant, free, and happy.

Philosophy, on the other hand, is understood by Plato to consist of the effort to establish the right order of the soul on the basis of principles that assign to each part its proper needs and refuses to each part those pursuits which ill serve it and the whole.

The democratic man as he is known to us today does not generally riot within himself, as Plato's drones. He is not licentious or disorderly. But he does share this similarity: he distrusts on principle the effort to establish a single human type as the highest example of human excellence. He does not necessarily reject the idea of excellence, but he does abhor the argument that excellence is singular. Above all, the man of democratic temperament bestows upon each and all the license to define excellence as it suits them. On the contrary, the man of philosophic aspiration can never truly accept the plurality of excellence, because to do so would constitute a denial of the special grace and majesty of philosophy. No philosopher can admit in the privacy of his study that philosophy is merely a taste that it pleases some to indulge and others to avoid.

Given the tension between philosophy and democracy, it seems inevitable that philosophy would wane with the forward movement of democracy. And this means that the understanding of natural right would wane as well. Professor Eidelberg begins his study with the following:

The American people are celebrating the bicentennial of the Declaration of Independence; but are they in fact honoring the principles of that document, the principles of the American Revolution? Do they understand them? Do our Statesmen?

Studies reveal that a shockingly large number of Americans do not even recognize the Declaration of Independence. Asked to comment on passages abstracted from the document, many express hostility to its fundamental principles, regarding them as subversive or suggestive of the teachings of Communism.

Professor Berns concludes his study with these words:

Philosophic men of the past addressed themselves to these questions and provided answers. But the Supreme Court no longer remembers those answers. The Founders, in their different ways, also provided answers, but the Court no longer remembers their answers either. Instead, it has allowed itself to be carried about on the wind of modern doctrine.

Could we have expected otherwise? Did the framers expect otherwise? Was it not unavoidable that the principle of equal right would work to the practical effect of encouraging every man to suppose that his own ideas are as good as the next man's? And would this not have the same effect upon our rulers?

The philosophy of natural right cannot withstand the assaults upon it at the hands of positivism—not because positivism proves the case against it, but because democrats are, according to the very ideas which make them democrats, highly susceptible to the claims of positivism. The latter teaches that all moral-philosophical systems are equal because none can lay claim to the truth. And facts are simply facts. Let each make of them what he may. It is beyond proof to the positivist that the facts in themselves can endorse any system of thought: they do not; they cannot. Is this not a view very much at home in a democracy? for it advises men to be confident in the belief, not only that they are equal before the law, but that their ideas should be as well. Quite simply, positivism is native to the soil of democracy, and philosophy is not.

What this means is that we should expect a democracy to be afflicted by bad ideas—not occasionally, but most of the time. I think it plausible that a distrust of wisdom was understood by Madison and others to be among the “diseases most incident to republican government.” If this is so, then it follows that philosophy in itself cannot provide an adequate basis for the self-restraint so necessary to the stability of democracy. And if philosophy cannot, what can?

With this question we return to Berns's argument respecting religion. But it may be countered that religious piety is as susceptible to the corrosive effects of positivism as is philosophy. Is there something else that may serve as an effective source of self-restraint? Perhaps the answer is to be found amidst the ideas that grew to dominance in the late 18th century, ideas associated in particular with Adam Smith and Montesquieu.

As argued in a recent essay by Prof. Ralph Lerner, a project was undertaken in the 18th century to wrest society from those of “aristocratical pretensions” whose ambition and pride posed an abiding threat to the stability of society. The efforts of Smith, Montesquieu, and such American counterparts as John Adams sought to assure the stability of the newly liberalizing societies of England and America on the basis of what Lerner calls “the tamed ambition of the new man of commerce.”

There came a time, in the eighteenth century, when what some men had been doing, more or less openly, for ages on end, was for the first time held forth as a model for all sensible folk to follow. . . .

The new model presupposed a social end of maximizing necessities and conveniences—an end that requires and justifies the ceaseless pursuit of interest, the precise calculation of gain, that indeed dictates limiting conditions without which such individual preoccupations

would become socially harmful. The new model, in short, presupposed the triumph of the commercial way of life, which in turn implied a kind of universal republicanism and fostered a kind of social and political egalitarianism.⁵

Required was a new model of man whose aspirations were more limited and more socially useful, if also less spectacular and inspiring. The point to the project was to elevate the man of trade into a position of the highest social esteem and thus into a position to win the emulation of his fellow countrymen and republicans. The danger apprehended by the promoters of the new model stemmed from the inordinate ambition and pride of the old aristocratic orders.

Granted, then, that the "spirit of commerce" works mightily against the love of glory. But not only against that. For all its preoccupation with minimal but continual gains, the spirit of commerce is antagonistic as well to the love of luxury, fine display, and objects of grandeur. It might also be said that the spirit of commerce, by promoting and setting free a mediocre if limitless ambition, is profoundly hostile to grand views.⁶

Can we go further? Can we argue that the promotion and emancipation of mediocre if limitless ambition is hostile as well to fleshy self-indulgence, the inordinate taste for the bizarre and perverse, all that smacks of the disreputable and low? Is the licentiousness to which democracies are prone relieved by the regimen of the commercial life? Can it not be argued persuasively that however far the life of money making and production is from the philosophic life, it was held out for good reason as the soundest assurance against the degeneration of the democratic man into one of Plato's drones? Respectability does not enliven the soul of a Caesar or a Socrates, but is it not a fitting passion for the man of democracy? Is it not the best under the circumstances, and pretty good at that?

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1. *The Use and Abuse of History*, trans. Adrian Collins (Indianapolis: Bobbs-Merrill, 1949), pp. 33-34.

2. For an opposing argument, see Robert Nisbet, "The Pursuit of Equality," *Public Interest*, Spring 1974, pp. 103-20.

3. Daniel Boorstin, *The Genius of American Politics* (Chicago: University of Chicago Press, 1953), p. 3.

4. I have Thomas Jefferson for an opponent in this view. I admit being chastened by the fact.

In his famous letter to John Adams of October 28, 1813, Jefferson argued the following of the democratic majority: "In general they will elect the really good and wise. In some instances, wealth may corrupt, and birth blind them; but not in sufficient degree to endanger the society."

5. Ralph Lerner, "The Tamed Ambition of the New Man of Commerce" (Paper delivered at the 1975 meeting of the American Political Science Association, San Francisco, California), pp. 2-3.

6. *Ibid.*, p. 12.