***On the Spirit of Rights*, by Dan Edelstein*,* Chicago and London, The University of Chicago Press, 2019, 336pp., $40 (hardcover), ISBN: 9780226588988.**

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Dan Edelstein’s *On the Spirit of Rights* began as a book review of Samuel Moyn’s *The Last Utopia* (2010) and Lynn Hunt’s *Inventing Human Rights* (2007). The book is framed in particular with reference to Moyn, who has more than anyone helped to put the study of human rights near the top of the agenda in intellectual history. Moyn argued for a moment of disruption in the 1970s, when human rights entered the fray, in opposition to triumphant *long durée* histories telling lineal and consensual stories.[[1]](#footnote-1) By contrast, in elucidating a natural rights discourse from the early-modern to the modern period, Edelstein’s new book emphasises continuity, even as he writes about debate and contestation. As he argues in the introduction, it is primarily the narratives and the consequences which have been contested rather than the concepts as such (p. 22). In other words, people have largely agreed about what the natural rights are, but they have disagreed about the extent to which they could be preserved and reclaimed in political societies. According to Edelstein’s story, there have essentially been three different rights regime: (1) the preservation regime, or the idea that we preserve our natural rights in political societies; (2) the abridgment regime, that is to say, the notion that we need to give up our natural rights in political societies; (3) the transfer regime, according to which we transfer our rights to the body politic. His book is about how they have competed, and waxed and waned from the sixteenth to the end of the eighteenth centuries, with some suggestions in the conclusion about the road from 1800 to the present day. Eventually the ‘preservation regime’ prevailed, and it happened much earlier than Moyn thinks, Edelstein argues.

The balance between continuity and discontinuity is of course at the heart of all historical study. Fear of Whig history is often justified but can become excessive. Rarely if ever does anything appear *ex nihilo*, as Moyn came close to suggesting was the case with ‘modern’ human rights in his first book.[[2]](#footnote-2) Part of Moyn’s ‘disruption’ argument was that the French revolutionaries thought of rights as being things granted and protected by the state rather than rights that could be upheld *against* the state. Edelstein shows, however, that the Huguenot Théodore de Bèze argued that human rights (*les droits humains*) limited sovereign power already in 1574, writing in the wake of the Saint-Bartholomew’s Day Massacre (p. 29). This way of thinking about rights is what Edelstein calls the ‘preservation regime’.

Edelstein’s narrative is not a lineal one of progress, however. Rather than suggesting that the discovery of the modern natural rights doctrine by Bèze and other Monarchomachs meant that it was somehow destined to succeed in the transatlantic revolutions of the late eighteenth century, *On the Spirit of Rights* tells a story of competing arguments. One of the most important is that of Thomas Hobbes’s ‘abridgment regime’. In Hobbes’s famous thought experiment of the state of nature everyone has a right to all things, but crucial to the abandonment of this state of war is that we need to give up this right. This idea that we must give up our natural liberty in civil society was emphasised by a wide spectrum of thinkers, from Samuel Pufendorf and Richard Cumberland to Algernon Sidney, notwithstanding their other important differences with Hobbes (pp. 45). The abridgement regime could thus serve absolutists and republicans alike, Edelstein argues.

A chief competitor of the ‘abridgement regime’ was the ‘transfer regime’. In this tradition, Edelstein places Spinoza, the little known James Craufurd, the Deist Matthew Tindal, and, perhaps somewhat surprisingly, John Locke. To defend the inclusion of the latter, Edelstein stresses that Locke justified the legal power of governments to tax property with the consent of the majority of the body politic rather than the individual concerned (p. 53). The right to resist government, or to punish a tyrant, is strictly speaking not retained by individuals, but can return to them if government acts tyrannically.

The big question for the book is: when did the ‘preservation regime’ re-enter the fray? According to Edelstein, the French Enlightenment was little indebted to Locke and other seventeenth-century natural law thinkers. While Edelstein is right that Locke’s *Essay Concerning Human Understanding* was more widely studied than the *Two Treatises of Government,* he may exaggerate Locke’s unimportance. Rather than establishing with certainty the relationship between Locke and thinkers such as Rousseau and Diderot, the book illustrates that more historical scholarship is needed on the reception of Locke’s political writings in Europe. For instance, the Swedish legislature (*Riksdag*) ordered a translation of the *Two Treatises* in 1726, less than a decade into its Age of Liberty (*Frihetstiden*) at a time when Swedes were more proficient in German, French, and Latin than English.[[3]](#footnote-3) This is an indication that Locke’s text was viewed in 1720s Sweden as an authoritative statement on a new form of anti-absolutist, parliamentary politics.

In the second third of the book, Edelstein turns to the moment when the ‘preservation regime’ came back to the fore, namely with the Physiocrats in the middle and second half of eighteenth-century France. The early Physiocrats such as Quesnay and Mirabeau *père* emphasised economic rights, but Mirabeau *fils* took the step to include political rights. The Physiocrats were also important for combining moral and economic arguments against slavery (pp. 137-8). Turgot emphasised economic rights not only in the sense of the right to property and trade but also social welfare, and Condorcet extended rights to slaves and women. Edelstein argues that the *philosophes* adopted the ‘preservation regime’ and their attitudes to rights from the Physiocrats rather than from seventeenth-century natural law. For instance, *pace* Jonathan Israel’s Radical-Spinozist Enlightenment, Edelstein shows that Baron d’Holbach’s theory of rights had much more in common with the Physiocrats than Spinoza’s contractarian, transfer argument (p. 88).

Edelstein is primarily an intellectual historian of eighteenth-century France. In this new work, he is interested in the intersections and dialectic between Francophone and Anglophone intellectual history. In the final part, Edelstein argues that the French Declaration of the Rights of the Man and the Citizen cannot be considered purely in a national context, but must be understood in relation to the American Revolution and American state declarations, which in turn were indebted to English common law. At the same time, he argues against historians who try to simply reduce the French experience to the American. The Anglo-American approach he dubs ‘natural constitutionalism’, defined as a belief in natural rights – notably the right to security, personal liberty and property – which had historically been protected by the English constitution and common law. This approach was most importantly expressed by William Blackstone in his *Commentaries on the Laws of England* (1765-70)*,* which was remarkably successful on both sides of the pond. Unlike in France, however, seventeenth-century natural law and John Locke became important among Americans when they began to contest the right of the British parliament to tax the colonies. The Americans continued their obsession with specific English/British legal rights such as trial by jury, which illustrates that they ‘understood liberty (a natural right) to depend on the justice system (and common law).’ (p. 169). The language of natural rights finally disappeared in the US Bill of Rights, although Edelstein suggests that this ‘may in part be viewed as accidental.’ (p. 170). The result, however, was that the Americans ended up with a rights regime limiting the power of governments.

The French, by contrast, ended up with the Declaration of Rights of Man and the Citizen which enabled what the government should do rather than limiting it. It emphasised national rights as well as individual ones. Following François Furet and other revisionists, Edelstein argues that the French Revolution and the Terror represented the suppression of individual freedom in the name of the collective (p. 191). Ultimately, Edelstein engages in the same debate as Hannah Arendt (in *On Revolution*) and others who try to explain why the French Revolution produced so much political violence and the American did not (p. 142). Although Edelstein does not quite express it in these terms, why the American Revolution was a success and the French a failure – at least on their own terms – is certainly a legitimate historical question, to which this book can be read as a contribution.

Despite the relative brevity of the book, Edelstein deals with numerous thinkers – French, English, Scottish, American, German, Dutch, Italian, and Swiss, both canonical and lesser-known. His emphasis is on constructing an intellectual debate spanning centuries. Less attention is generally being paid to what each thinker tried to achieve in their own particular circumstances. For example, when he writes in one place that the ‘preservation regime’ still enjoyed plenty of support in Locke’s lifetime, he gives ‘the French Huguenots’ of the previous century as his example (p. 54). There are also instances where it seems as if Edelstein seeks to shoehorn scattered remarks into his story. For example, when Voltaire writes in the English dedication to Queen Caroline in his *La Henriade* (1728) that ‘YOUR MAJESTY will find in this book…the Rights of Kings always asserted, and those of Mankind never set aside’ (p. 64), can it seriously be claimed that Voltaire in this instance is engaging in a debate about the nature of rights? Edelstein seems to suggest as much, but later in the book he writes that we should not ‘compare apples and oranges: political pamphlets, sermons, novels, and essays will not use terms with the same theoretical precision as philosophical treatises.’ (p. 145). There are additional statements in the book which I struggle to reconcile, for instance when Edelstein writes that ‘Montesquieu does not mention natural rights in any of his major works’ (p. 61), but then later accurately quotes Montesquieu as saying that slavery is ‘as opposed to civil rights as to *natural right.*’ (p. 131; my italics). In fact, ‘*droit naturel’* (in the singular rather than in the plural) occurs in two chapter headings, and in eight other places in *The Spirit of Laws* (1748). One gets the sense that Edelstein has treated such a large pool of evidence – which is very impressive in itself – but that he has not taken sufficient time to sift all of it has carefully as he could have.

Having said that, Edelstein’s idea of taking the language of natural rights seriously in the transition from early-modern to modern history is entirely sensible, and it provides an important counterargument to Moyn’s ‘great disruption’ thesis.[[4]](#footnote-4) Edelstein’s pedagogical terms (his preservation, abridgment and transfer regimes) are for the most part helpful. I am less sure that we gain anything by calling Pufendorf a ‘political conservative’ (p. 122) and the Physiocrats pre-revolutionary ‘liberals’ (p. 140), since these terms carry party political and ideological connotations from later periods and the present day. It seems to me that such anachronistic labels might be more mystifying than conducive.

What people are going to find more problematic with this book – and especially with the final chapter – is that it looks as if we are back with a teleological story. Edelstein says explicitly that the eighteenth century represented ‘evolution’ and the ‘culmination’ of debates about rights that had gone on since antiquity (p. 194). The French Revolution then set the gold standard for the future: ‘The long and wide reverberations of the 1789 and 1793 Declarations also ensured a degree of continuity in how people thought about human rights up until 1948’, he writes, with reference to the United Nations Declaration of Human Rights. 1789 and 1793 consolidated the ‘preservation regime’, he argues. Edelstein is of course right to stress the impact of these Declarations and the fact that generations of lawyers and politicians returned to them when formulating their own declarations and constitutions, in the Caribbean and South America as well as across Europe as a series of nation-states were formed in the nineteenth century and beyond, including Greece, Italy and Germany. The problem with his narrative, however, is that it downplays the degree to which the French Revolution was a failure. It was indeed the moment when rights-based politics led to a humanitarian disaster.[[5]](#footnote-5) Edmund Burke understood his attack on the French Revolution as a defence of the ‘real of rights of man’, since the revolutionaries had contempt for the rights of individuals who disagreed with their mission of social reorganisation and universal empire.[[6]](#footnote-6) The nineteenth century was not only about imitating the French Revolution, but also to make sure not to repeat its horrors. Edelstein probably knows this and makes some gestures towards it – especially when discussing South America and the new constitution in France after 1848 – but it could certainly have been much more emphasised in this highly readable, ambitious and thought-provoking book.

1. Moyn’s later book, *Not Enough: Human Rights in an Unequal World* (Cambridge, MA, and London: Harvard University Press, 2018), revises the emphasis on disruption somewhat by looking at the period from the French Revolution. [↑](#footnote-ref-1)
2. Samuel Moyn, *The Last Utopia: Human Rights in History* (Cambridge, MA, and London: Harvard University Press, 2010), pp. 3-4. It should be noted, however, that Moyn’s argument was about the rise of an organised *movement* around human rights rather than ideas. [↑](#footnote-ref-2)
3. Bo Lindberg, *Den antika skevheten. Politiska ord och begrepp i det tidig-moderna Sverige* (Stockholm: K. Vitterhets Historie och Antikvitetsakademien, 2006). [↑](#footnote-ref-3)
4. See, however, note 2. [↑](#footnote-ref-4)
5. Richard Whatmore, ‘Rights After the Revolutions’, in *Philosophy, Rights and Natural Law,* ed. Ian Hunter and Whatmore (Edinburgh: Edinburgh University Press, 2019). [↑](#footnote-ref-5)
6. Richad Bourke, *Empire and Revolution: The Political Life of Edmund Burke* (Princeton, NJ: Princeton University Press, 2015), chs. 13, 14 and 16. [↑](#footnote-ref-6)