write in defense of authentic human goods is always a constructive activity, no matter the circumstances or short-term results.

The disposition to be grateful for goods received, however, neither exhausts the virtue of justice nor the good life as a whole. It may play as important a foundational role in the life of the virtues as Mitchell suggests, but by itself it does not guarantee—or even effectively promote—a healthy political outcome. What is needed to that end is an adequate substantive understanding of the common good and also some measure of the virtues that make its attainment possible. And it is crucial to note that those virtues are active and creative ones, virtues such as courage, the prudence of the ruler, and the justice that is a disposition to value and to seek common goods over private ones. Shakespeare's *Lear* is a tragedy, after all, because what falls is not just a king, but a kingdom. Lear's failure to become wise is more culpable because he should have been a cause of virtue in others.

Years ago, in a review of Judge Bork's *Slouching toward Gomorrah*, the late Eugene Genovese wondered whether our cultural decline could be reversed by anything short of what he called a "stern regime," and it may be that a dose of New Left radicalism is just what the tradition of the virtues can use now and again. For Genovese's conjecture reminds us that it was not only due to the labors of St. Benedict that Europe was able to emerge from the chaos of the Dark Ages; it was also thanks to Clovis drilling his soldiers into Roman order and Charlemagne imitating Caesar by building a bridge across the Rhine. And Victor Davis Hanson has been persistent in arguing that the very values that Wendell Berry and Mark Mitchell laud—the values of garden and hearth, nursery and school—have regularly needed to be defended by more than pitchforks. Yet these observations do not at all detract from the good that Mr. Mitchell has achieved with *The Politics of Gratitude*; they merely point to a possible sequel.

LIMITED OR DECENTRALIZED GOVERNMENT?

Kevin R. C. Gutzman

Limited Government and the Bill of Rights
by Patrick M. Garry (Columbia: University of Missouri Press, 2012)

Patrick M. Garry finds contemporary judicial misuse of the Bill of Rights distasteful. In his latest book, he offers an alternative way of understanding the Constitution's first ten amendments.

Since the revolution of 1937, federal judges, led by the Supreme Court, have essentially abandoned enforcement of the Constitution as a frame of limited government, Garry notes. This raises serious philosophical issues, because while the Federalists of ratification days sold the Constitution as establishing a federal government of very few powers and leaving all the rest to the states, we live under a radically different dispensation now. Instead of the Constitution to which the people agreed in 1787–88, the judges have opted instead to impose upon us a charter of essentially boundless power. By the post-

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1937 reading, the Constitution empowers Congress to do essentially anything it wants, and the Tenth Amendment—which Thomas Jefferson in 1791 called the underlying principle of the Constitution—has become a dead letter.

One exception to the idea that the central government now exercises unlimited power might be thought to be the Bill of Rights. To the contrary, amendments conceived as further clarifications of the unamended Constitution's limitations on federal power have come instead in the hands of federal judges to be either meaningless or excuses for additional intervention of unaccountable, unelected federal officials into the policy-making processes of state governments.

As Garry explains, federal courts generally now insist that the Bill of Rights is about individual autonomy rather than caging in federal power. In various areas, this has meant a complete inversion of the original federal system, so that rather than deciding significant policy questions through local legislative elections, initiative, and/or referendum, Americans now found themselves subjected to the results of the philosophical ruminations of such unqualified people as Sandra Day O'Connor, Anthony Kennedy, and William Brennan.

This is precisely the kind of unaccountable, unrepublican government against which the American Revolution was fought. It is precisely the kind of government that Federalists of the ratification contest promised that the U.S. Constitution would not create.

Garry points out that the individual-autonomy model of the Bill of Rights leaves judges essentially at liberty to find their own preferred case outcomes. Such a judicial role has little relationship to the classic American ideas that the Constitution means what the people intended it to mean and that law should be made by elected representatives, preferably as locally as possible. His alternative approach to the Bill of Rights is a limited-government model.

Instead of seeing the first nine amendments as empowering federal courts to enact their own excogitations into law and the tenth as void, Garry says that he would have the entire suite of amendments ratified in 1791 understood in the same way: as further limiting, or clarifying preexisting limits of, the power of the central government. This approach has the notable virtue of consistency with the Bill of Rights' original purpose, as stated in the Preamble that the First Congress attached to the twelve amendments it referred to the states for their ratification in 1789.[1] That Preamble, which is virtually never printed along with the Bill of Rights, says that the reason Congress is referring the twelve proposed amendments is because "a number of the States, at the time of their adopting the Constitution, expressed a desire, in order to prevent misconstruction or abuse of its powers, that further declaratory and restrictive clauses should be added." "Declaratory and restrictive clauses" clarify the limits of government's powers; they do not empower Justices Ginsburg, Warren, Douglas, and the like to go out in quest of "evolving standards of decency" and call them constitutional mandates.

Yet Garry's approach to matters constitutional is not quite equivalent to originalism. The reason lies in his tendency, which is typical of law professors, to consider Bill of Rights provisions as speaking to "government" generally. As John Marshall noted for a unanimous Supreme Court in *Barron v. Baltimore* (1833), the Bill of Rights was intended as a limitation solely upon the federal government, not as a mechanism to be used by federal judges to supervise state governments' behavior. Its real purpose

was to reinforce the federal principle, not to ensure that government generally was limited.

Take the Establishment Clause, for example. It is true that this initial provision of the Bill of Rights limits the federal government, which is thereby precluded from mandating that all Americans pay to fund Methodism, say, or Judaism. Still, the provision is not about limited government generally, for it could, if rightly applied, serve as a shield for state governments' policies endorsing particular religious observances. All the way to 1833, Massachusetts maintained tax support for Congregationalism, for example, and that was perfectly consistent with the First Amendment.

Generations of lawyers and other students of constitutional law (that is, court decisions purporting to enforce the Constitution) have been taught that the Fourteenth Amendment's Due Process Clause incorporated various provisions of the first eight amendments (though still not all of them). While he pays respectful attention to contemporary figures (including Supreme Court justices) hostile to incorporation of the Establishment Clause, which they rightly say is not founded in the understanding of the Fourteenth Amendment's ratifiers, Garry says it would be undesirable to backtrack on this line of cases to the point of returning control over such questions to the states. Why respect for the people's sovereignty in this regard would be undesirable, he does not say.

One infers that Garry fears that some of the resulting policy outcomes would displease him. A results-oriented leitmotif runs through the book. Time after time, Garry says that such and such outcome would be good, because it would limit government.

His insistence that this amounts to originalism does not square with the facts. Consider the Establishment Clause again: while its application as originally understood would indeed limit the federal government, there is no reason to expect that the states would all continue along the same path as has been imposed upon them since the *Everson* decision of 1947. Far more likely is that some states would become *less* limited in this area than they have been since then. We could expect to see religious invocations at public school functions, prayer in some states' public schools, crèches in public spaces, and various other religious statements made by state governments. Not limited government, but decentralized republican government was the original model.

Garry makes another error regarding the inception of the federal system. Like many other scholars, he sees the Bill of Rights as the Federalist response to Antifederalist complaints about the unamended Constitution. In reality, however, while promises to seek amendments in the First Congress first arose in the context of Massachusetts's near-run ratification convention, the chief congressional proponent of amendments had a different motivation. Representative James Madison's advocacy of amendments was his response to the insistence of his Baptist constituents and the principled demands of some of his fellow Virginia political leaders—notably his friends Thomas Jefferson, Edmund Randolph, and Edmund Pendleton, none of whom was an Antifederalist, and Antifederalist George Mason, whom Madison had long respected. Madison's colleagues in the First Congress recognized that Virginia political pressures played a role in his decision to advocate amendments, and by that they must have understood the numerous Baptists in his congressional district who had insisted he promise to seek something like the Establishment Clause in the First Congress.[2]

Much of Garry's book considers case law dealing with the First Amendment. He

devotes entire chapters to "The Free Speech Clause as a Limited-Government Provision" and "The Religion Clause [sic] and Limited Government." In large portions of each, he simply runs through outstanding recent court cases dealing with the provisions, along the way noting how he thinks that the courts' adoption of his limited-government paradigm would or would not change the outcome of each case.

Probably the book's chief weakness is the extent to which Garry simply describes precedent after precedent after precedent. Even readers familiar with the case law with which he deals are apt to find these sections of the book tedious. They might have been improved drastically by Garry's abandoning the "In x case the facts were 1 and 2, and the court decided A and B" formula in favor of a bit of variety.

Another major weakness of this study lies in lack of clarity concerning its purpose. On one hand, it devotes substantial space to assertions concerning the Bill of Rights' function and the likely repercussions of adopting his position; on the other, Garry cannot seriously believe that federal judges are going to abandon the great policy-making role they have played since the 1930s in favor of a limited-government perspective that is not now and never has been the prevailing position of their caste. Garry's assertion that a limited-government approach would yield superior results cannot have much allure for a judiciary accustomed to foisting its personal predilections upon us in the name of the Constitution.

1 Thomas E. Woods Jr. and Kevin R. C. Gutzman, *Who Killed the Constitution? The Fate of American Liberty from World War I to George W. Bush* (New York: Crown Forum, 2008), 215.

2 For Madison and the Bill of Rights, see Kevin R. C. Gutzman, *James Madison and the Making of America* (New York: St. Martin's Press, 2012).

FICTION AND LIBERAL EDUCATION

T. W. Hendricks

Heartland of the Imagination: Conservative Values in American Literature from Poe to O'Connor to Haruf
by Jeffrey J. Folks
(Jefferson, NC: McFarland, 2012)

The idea that the American South, the Midwest, and the Plains States composed a "heartland" in which people's lives are still in accordance with the original ideals of the nation originated in the Jeffersonian vision of a nation of small farmers and tradesmen. It gained currency as the heartland and its settlers were exploited by land speculators, banks, and railroads. In his new study, *Heartland of the Imagination: Conservative Values in American Literature from Poe to O'Connor to Haruf*, Jeffrey J. Folks discusses the effect of the myth of the American heartland on the work of a selection of respected writers whose careers cover a significant span of American literary history: Edgar Allan Poe, Vachel Lindsay, James Agee, Flannery O'Connor, V. S. Naipaul, and Kent Haruf.

That the six apparently have little in common is, in Folks's view, a positive feature: they demonstrate that the heartland myth is consistent with a variety of perspectives, such as Poe's romanticism, Lindsay's Christian

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