

Review Essay

Jaffa's Lincolnian Defense of the Founding

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Harry V. Jaffa, *A New Birth of Freedom: Abraham Lincoln and the Coming of the Civil War* (Lanham, MD.: Rowman & Littlefield, 2000), xiv + 550 pp., \$35.00.

In *A New Birth of Freedom*, Harry Jaffa presents a powerful defense of the political theory of the American founding. He does it in grand style. Formally, his topic is Lincoln and the Civil War. In fact, the book ranges widely among philosophers, poets, and events, from the distant past right down to the present. It is hard to know how to classify this book. It is not political philosophy in the usual sense of analysis of abstract themes or texts. Nor is it history in the usual sense of a story of a particular person, event, or era. It is philosophical history, in which a single statesman (Lincoln) and political event (the beginning of the Civil War) become the focus of sustained reflection on the enduring problems of life, justice, civilization, and human greatness. And it obliterates the perverse thesis, widely believed by many libertarians and conservatives today, that the Civil War was not about slavery, and that Lincoln represents the victory of tyranny over liberty.

Jaffa's achievement—for this is an outstanding book—was made possible by the work of his teacher, the political philosopher Leo Strauss. It was Strauss who taught Jaffa how to read the writings of the philosophers, poets, and statesmen seriously, meaning to read them as if they might be true. (I wonder if anyone has ever accorded James Buchanan's speeches such careful and respectful analysis.) Strauss also taught Jaffa that *the* problem of our time is the denial of the possibility that human reason can discover enduring truth about how human life should be lived. Consequently, Jaffa's defense of Lincoln is also a critique of contemporary relativism and historicism.

Strauss called for "unhesitating loyalty to a decent constitutionalism and even to the cause of constitutionalism" (1968, p. 24). Jaffa has taken that call to heart. But the question is, What, in our time, best serves the cause of constitutionalism? Strauss did not answer that question explicitly. Some of Strauss's most memorable passages, however, are criticisms of the political teaching of John Locke. But Locke was the philosopher who, more than any other, the Founders looked up to as a spokesman for the principles of constitutionalism. Strauss's

statements on Locke might well lead someone to conclude, as the earlier Jaffa, and many other Straussians (including me, until just a few years ago), did conclude, that "the cause of constitutionalism" needs a stronger foundation than the Lockean doctrine of natural rights. The core of Locke's doctrine, Strauss wrote in *What Is Political Philosophy?* was the rejection of virtue as a concern of government. Locke, according to Strauss, turned to acquisitiveness as a substitute for virtue: "an utterly selfish passion whose satisfaction does not require the spilling of any blood and whose effect is the improvement of the lot of all." This Lockean doctrine, said Strauss, "This serpentine wisdom, which corrupted by charming and charmed by corrupting, this degradation of man, called forth Jean Jacques Rousseau's passionate and still unforgettable protest" (1959, pp. 49–50). No wonder the Jaffa of *Crisis* thought that the "cause of constitutionalism" could only be vindicated if it could be shown to rest on a non-Lockean foundation. In that book, Jaffa believed that he had discovered that foundation in Lincoln's creative transformation of the founding.

But this negative assessment of Locke is not Strauss's last word. In the second chapter of *Liberalism*, Strauss takes a more benign view. That chapter begins with the classic case for aristocratic government, which is the claim that "the gentlemen," those of wealth who have been liberally educated, ought to rule without the consent of the vulgar, with whom, as men of virtue, the gentlemen have nothing in common. But Strauss immediately admits that the gentlemen's virtue is at best only a "reflection" of genuine virtue, which belongs solely to the philosophers. In other words, the gentlemen and the vulgar have more in common than one might think. Strauss implies that even on classical grounds, because of the rarity of genuine virtue, there is a strong case for democracy. In this context, Strauss says that Locke advocated "the religious education of the people" and the liberal education of the gentlemen: the religiously educated people would elect the liberally educated gentlemen to public office. Then Strauss remarks: "Not a few points which Locke meant are brought out clearly in the *Federalist Papers*. These writings reveal their connection with the classics simply enough by presenting themselves as the work of one Publius" (1968, pp. 15–16).

In this passage of *Liberalism*, Strauss acknowledges in effect that there is a greater affinity between the classics on the one hand, and Locke and the American founding on the other, than one might expect if one takes Strauss's apparently strict distinction between "ancients and moderns" as his last word. Strauss's denunciations of Locke, like the one quoted earlier, are always found in contexts where Strauss is stressing the classics-moderns distinction. One might note that this distinction is absent from Strauss's *Persecution and the Art of Writing*, a book in which Spinoza, a "modern," is treated with great respect as a philosopher whose models included Plato and Maimonides. Besides, Strauss emphasizes that because our kind of society was "wholly unknown to the classics," their writings cannot "supply us with recipes for today's use." Their prin-

ciples may be true, but “the wise application . . . of these principles to our tasks” must be “achieved by us” (1964, p. 11).

In *A New Birth of Freedom*, Jaffa has followed that wise advice. Instead of rejecting the compact theory of the founding from the outset, as he had done in *Crisis*, Jaffa now sees it through Lincoln’s eyes, and Washington’s and Jefferson’s and Madison’s, as both just and noble. That is, instead of imposing an overly simple and therefore inaccurate “Straussian” framework on Lincoln and the founding, as he had done in his earlier book (“ancients good, moderns bad”), Jaffa now analyzes the argument of the founding on its own terms. Jaffa’s earlier approach had led him to miss the moral and religious heart of the founding in *Crisis*. Jaffa now applies, more faithfully than he did before, Strauss’s dictum that we should try to understand an author exactly as he understood himself before we try to understand him better than he understood himself.

In *Crisis of the House Divided*, Jaffa had argued that the Founders’ idea of the state of nature, as the original source of individual rights, was “completely alien to Lincoln’s whole way of thinking” (1959, p. 322). According to *Crisis*, there was a “defect in his [Jefferson’s] theory,” because although in the state of nature “men have equal and unalienable rights, they have no real duties” (p. 323). Consequently, Jaffa had said, Lincoln had to transform the Founders’ “egotistic” theory into a “categorical” moral imperative, requiring men to oppose slavery because it is morally wrong (p. 327):

Jefferson’s attempt to conceive of a remedy for the people’s corruption was vitiated by his Lockean horizon. . . . [T]here is little beyond an appeal to enlightened self-interest in the doctrine of universal equality in its pristine, Lockean form. Whereas for Lincoln, egotism and altruism ultimately coincide, inasmuch as the greatest self-satisfaction is conceived as service to others; in the [Lockean] ethics just described such altruism as there is is ultimately reduced to egotism. . . . [There was a] widespread lack of concern over the moral challenge of slavery . . . in the Revolutionary generation. For this reason we must concede that Lincoln exaggerated the degree in which the men of the Revolution were concerned with the freedom of all men. (Pp. 323–24)

The conclusion that Jaffa drew in the earlier book was that although the American founding was defective, Lincoln’s statesmanship and magnanimity had ennobled it. Lincoln, according to *Crisis*, had brilliantly turned a doctrine of self-interest into a doctrine of moral virtue. In doing so, Jaffa had argued, Lincoln had turned a modern doctrine into a classical one, for the moderns, said Jaffa, deny the primacy of duty, while the classics affirmed it. Moreover, Lincoln, in Jaffa’s earlier account, had rejected the Founders’ claim that all men are created equal in the decisive sense. Lincoln’s Lyceum and Temperance ad-

dresses, Jaffa had argued in his earlier book, show that “abstractly considered,” Lincoln was fully in agreement with Socrates’ suggestion that the lawless rule of the wise without the consent of the governed was the best form of government (1959, p. 195). According to *Crisis*, Lincoln believed that in a profound sense all men are created unequal. Some men—those of “the loftiest genius”—are of the “family of the lion, or the tribe of the eagle,” and are therefore virtually “a species apart” (pp. 210–11). Such men win deathless fame by their great deeds, either by “emancipating slaves, or enslaving freemen.” The proposition that all men are created equal, in Jaffa’s 1959 account, is not a claim that all men share equally in rationality, but rather an inference that great men must draw when they confront the fact that their own highest good cannot be attained through political fame and offices, but only by affirming the superiority of self-restraint over self-promotion (pp. 222, 225).

In *A New Birth*, Jaffa rejects his earlier interpretation of America. Lincoln is still presented as a great man, but his greatness now lies in his brilliant exposition and recovery of the founding principles. The simplistically amoral portrayal of the founding principles in *Crisis* is replaced by an exposition of compact theory that brings out its insightfulness and richness. In particular, the moral and religious dimension of the Founders’ political teaching, having been neglected in *Crisis*, is now fully articulated, with a real increase of accuracy and sophistication. The Founders’ (and Locke’s) doctrine of the law of nature, the source of men’s rights no less than their moral obligations, is now given its due. (One of the most serious distortions of the Founders’ thought in *Crisis* was Jaffa’s near-silence on the law of nature.) Also given its due in *A New Birth* is the religious teaching of the Declaration, with its fourfold reference to God as lawgiver, creator, providence, and supreme judge, and of the founding era in general. Far from being a superficial and degrading doctrine of self-interest applied to the world of politics, the doctrine of the founding is measured in *New Birth* against the teachings of several of the most insightful political philosophers in the Western tradition, including Dante, Shakespeare, and Aristotle, and the Founders’ theory is not found wanting.

I do not mean to disparage *Crisis of the House Divided*. That book has rightly been celebrated as a magnificent portrayal of Lincoln. Whatever its limits, *Crisis* was the necessary foundation for Jaffa’s later work, just as Strauss’s brilliant account of the history of political philosophy was the foundation for *Crisis*. For it was in *Crisis* that Jaffa had used the analytical tools of Strauss to reveal the possibility of statesmanship of the highest order in the modern world. We should remind ourselves of how difficult Jaffa’s task was. Few scholars in the 1950s outside the Strauss school even had an inkling of what prudence and magnanimity are, in the sense of Aristotle’s *Nicomachean Ethics*. *Crisis* was a superb beginning in the recovery of that understanding. But it was bought at the expense of a severe distortion of the American founding. Jaffa had to work his way forward (into the ravages of historicism, which he now understands far

more profoundly than in *Crisis*) and backward (into a more penetrating account of the founding) in order to complete his task. That it took Jaffa most of a lifetime should be no surprise. The wonder is that he was able to do it at all, considering how many scholars, most with far more lustrous reputations, according to the conventions of the modern academy, have tried in vain.

Heidegger once remarked that “Everything great can only begin great. . . . The great begins great, and is sustained, as long as it endures, only through a free return of the great” (1953, p. 12, my translation). Jaffa’s new assessment of the founding agrees with this sentiment. In Lincoln, through the crucible of the 1850s and the Civil War, the principles of the founding achieved a “free return,” not a mechanical repetition, but a rethinking and thoughtful application to the crisis of that day.

In *New Birth*, the founding principles themselves, and no longer Lincoln the statesman, are the highest thing in the regime. Jaffa proves that it took a great man to sustain a nation dedicated to principles whose greatness he demonstrates.

The first two chapters of *New Birth* are devoted respectively to *natural right* and *history*. These themes are the two poles of the book as a whole. Lincoln and the Founders represent one pole: natural right. The Southern secessionists, Calhoun, modern historians, and modern liberals and conservatives represent the other pole: history or rather historicism.

The two poles around which *Crisis of the House Divided* had revolved were Lincoln and Stephen Douglas, Lincoln’s major political opponent of the 1850s. Douglas supported half of the Declaration’s teaching (consent or majority rule) while denying its foundation (the natural equality of all human beings.) Douglas thought he had found a practical solution to the slavery question by denying that there was any principled reason either to support or oppose it. If only Americans could agree to disagree, to live in a “big tent” in which the people of each state would decide whether to have slavery or not, the national agitation could end. Lincoln opposed Douglas’s “don’t care” attitude toward slavery in the name of equal liberty for all.

Jaffa went to great lengths in the earlier book to make “the case for Douglas,” and then to show that Lincoln was correct to convince his fellow Republicans that Douglas’s position of “don’t care” was wrong. Lincoln’s, and Jaffa’s, case against Douglas was that Douglas’s position provided no real defense against the Southern demand for the full legitimization of slavery. Philosophically, Douglas, in *Crisis*, may be said to have had, incoherently, one foot in the old world of modern natural right, and one foot in the more radical world of legal positivism.

In *A New Birth of Freedom*, the stakes are much higher. In this book Douglas comes to sight as only one of several vivid and important characters in a drama that has assumed world-historical proportions. Lincoln’s deepest antagonist, the

most formidable defender of slavery, is now John C. Calhoun. And Calhoun, Jaffa argues, is a much more serious, and more radical, thinker than Douglas, who, in the end, was a practical man who disdained theoretical reasoning. Calhoun agreed with Lincoln that the sectional crisis could not be resolved without a correct theoretical understanding of the human condition. Calhoun rejected not only the Declaration of Independence, but the idea of political philosophy altogether. Calhoun, Jaffa argues, is a post-Hegelian historicist, who as such represents the dominant trend of modern philosophy over the past two centuries. For that reason, Jaffa can say that the dominant intellectual position in our time is Calhounite. He can also say that the South may have lost the Civil War, but it has won the battle of ideas, insofar as the historicist rejection of the Declaration has replaced Lincoln’s vision of a “new birth of freedom” based on a recovery of the founding principles (2000, pp. 471, 86). Lincoln now appears as a defender not only of the idea of equality in the Declaration, but of the idea of natural right going back to Aristotle and Socrates. The Civil War, in this light, is the political manifestation of the great quarrel between the philosophical tradition initiated by Socrates and the modern historicist denial that reason can discover unchanging principles of right and wrong. That quarrel was the theme of Strauss’s *Natural Right and History*, and Jaffa’s new analysis of the Civil War finds the struggle between natural right and historicism at the heart of that event.

In the Civil War, the question was, Who was going to prevail, Lincoln or Calhoun, natural right or historicism? Jaffa argues that in today’s America, and throughout the Western world, we face the same choice that America faced in the years before and after 1860. Which is to prevail, the natural right tradition of Socrates, renewed in the founding and in Lincoln’s speeches and deeds? Or the historicism of Calhoun, denying permanent standards of right and wrong, rejecting the capacity of reason to discover the truth, and replacing them with a naive faith in progress that in the end justifies the master-race theory of the Old South, the master-race theory of Nazism (Aryans) and Communism (the Proletariat), and the whole agenda of the modern administrative state, which seeks to provide for our every want, so that we can indulge our every passion? Lincoln was indeed the savior of the principles of the Declaration of Independence. But more important, Jaffa argues, he was the savior of the Great Tradition of Socratic rationalism. Lincoln’s statesmanship, leading the original idea of America to victory in the Civil War, made possible America’s successful resistance, in the twentieth century, to the two most terrible tyrannies the world has ever seen. America, in Jaffa’s view, is the last best political embodiment of Socratic natural right in the modern world.

A New Birth of Freedom is a big, sprawling book. It is hard to see it as a whole. Although its focus is Lincoln and the beginning of the Civil War, it is

full of what at first appears to be a bewildering variety of tangents. But in fact, the book has a simple logical structure that falls into three parts.

Part 1 is theoretical, and includes two chapters. As we have already noted, chapter 1 is on natural right, chapter 2 on history.

Part 2 (chapters 3 through 6), is practical. Here Jaffa presents a brilliant analysis of the political scene in America in the late 1850s and at the beginning of Lincoln's presidency. His point throughout is that the Civil War was about slavery in the broadest sense, that is, not just the chattel slavery that affected blacks, but the Southern denial of the right of a people to govern itself through free speech and elections.

Part 3 (the single chapter 7), returns to theory. Jaffa shows that Calhoun, Lincoln's deepest antagonist, agreed with Lincoln that political justice depends on getting the theory right. But in Calhoun's theory necessity, force, and the inexorable historical process replace the Founders' reason, deliberation, and the natural right of every man to freedom under the law of nature.

The first chapter, the unifying themes of which are sometimes hard to follow, analyzes several writings of Jefferson and Madison as an inlet to the core meaning of the founding principles. Jaffa wants to make several controversial points clear. First, the founding principles are without doubt opposed to slavery in all its forms, whether chattel (personal ownership of another human being) or political (rule without the consent of the governed). Second, precisely because these principles are moral, liberty cannot mean that human beings have a right to do whatever they want. Third, because the social compact requires a people who accept the moral limits of the law of nature ("do not harm others" being its most urgent command), there is a serious but unavoidable difficulty built into any government based on the compact theory. The government, based on consent, must refrain from violating the rights of the minority; but passion and error, ever present in human nature, will ever provoke bitter quarreling among those who claim to be injured and those who claim that the government is securing the moral conditions of freedom. Jaffa writes, darkly, "Whether measures limiting the liberties of alleged sympathizers with Jacobinism or with Communism are subterfuges to suppress freedom or are expressions of legitimate concern for security is a never ending debate" (2000, p. 65). When Jefferson won the election of 1800, and the Federalists accepted his victory, he became convinced that elections were a sufficient means to resolve quarrels of this kind. But, as Jaffa notes, "Jefferson's belief in the power of truth in the free political marketplace of ideas" was mistaken. "The revolt against Lincoln's election suggests that Jefferson's optimism concerning the future of the popular consensus in favor of Union and republicanism had not been justified" (pp. 70–71).

Jaffa makes clear that Jefferson did not understand the tragic character of political life, including the politics of a political order built on the true theory of politics. Contrary to Jefferson's expectation, there can be no permanent popular

enlightenment. This may be a criticism of Jefferson, but it is no criticism of Jefferson's theory. It is simply a fact that no theory, however true, can be the permanent basis of any successful political order. This was the challenge facing Lincoln. This is why Lincoln was not boasting when he said that the task facing him, as he assumed the presidency in 1861, was "greater than that which rested upon Washington" (p. 252).

Chapter 2 begins with today's historians' rejection of the principles of the Declaration. Jaffa traces that rejection to the victory of Hegelian and post-Hegelian historicism. Scholars like Carl Becker and their more recent progeny simply take for granted that the idea of "natural rights" is an eighteenth-century delusion. This rejection leads directly to our current crisis, in which politicians and intellectuals no longer believe in their country's principles. The consequence is that they are faithful to the United States Constitution only with half a heart, or, in our universities, considerably less than half.

Jaffa has written frequently over the years against historicism, but this part of chapter 2 is perhaps his most powerful presentation of that argument. Using historian Carl Becker as a foil, Jaffa relentlessly exposes the unexamined prejudices and assumptions that lie behind Becker's (and the whole scholarly establishment's) facile dismissal of the principles of the Declaration. Becker admitted that the natural rights philosophy of the founding was based on "the idea of nature as a standard," that is, "the idea of an unchanging ground of changing experience." Following Hegel and a multitude of other nineteenth-century writers, Becker rejected nature in the name of history. That is, Becker denied the existence of an unchanging reality and insisted that everything is always changing. There is, therefore, according to Becker, no permanent human nature; there are only varieties of historical manifestations of the human. But Jaffa points out that Becker never attempted to prove his thesis, which "would have to take the form of a demonstration that there is no unchanging ground of human experience" (2000, p. 84).

The historicism of which Becker is a gentlemanly academic representative was also the basis of the Marxist Soviet Union and Hitler's Germany. In America, where it predominates in the modern academy, a variant of the same doctrine has become the ground of modern conservatism (as Jaffa illustrates through the example of Chief Justice William Rehnquist, pp. 86–90) as well as of modern liberalism (pp. 95–96).

Part 2 of *A New Birth* plunges us into the politics of the coming of the Civil War. In a masterpiece of political analysis, weaving together themes theoretical and practical, Jaffa shows the deep gulf that had developed in the American soul between those few who remained faithful to the founding principles and the many who did not. In chapter 3 Jaffa analyzes the climate of opinion of the late 1850s through a discussion of speeches and actions of James Buchanan, Jefferson Davis, and Alexander Stephens. All three gave effectual support to the cause of secession, but only Stephens had a fully coherent understanding of what

was at stake in the quarrel. He alone stated the fundamental reason for secession: that America's earlier dedication to equality had been an error, and that what was needed was an affirmation that all men are created unequal, and that slavery is the proper condition of the inferior race, as mastery is of the master race.

Jaffa emphasizes the gravity of the quarrel by showing that the agenda of the South before the election of 1860 was extremely aggressive, in three ways. First, the federal government was to create a slave code for the territories. That is, the territories were not to be free to choose whether to have slavery or not, as Douglas had proposed. Instead, the full power of the federal government was to guarantee full legal protection of slavery against any local opposition. Second, the Southern analysis of the crisis focused on Northern criticism of slavery as an evil. They demanded, and Buchanan echoed them, that all criticism of slavery must cease. A federal sedition law was proposed that would have made it a federal crime to criticize slavery. Third, as the culmination of the whole policy, slavery was to be made legal everywhere in America. This was what Lincoln had charged against Douglas, and Douglas himself had claimed that the Buchanan administration was involved in a national conspiracy to legalize slavery in every state (pp. 171, 318). The reader will note the complete absence of Southern concern for state rights in the period immediately before Lincoln's election. As long as the South had hopes of dominating the federal government, it insisted on a vast expansion of federal power to legitimize and expand the institution of slavery.

Throughout these chapters, Jaffa shows how every word and action of Lincoln were rigorously, almost geometrically, designed to advance his central purpose: to defend the cause of freedom. In the 1850s, that cause required Lincoln to focus on the theme of resisting the territorial expansion of slavery. In the First Inaugural Address of March 1861, Lincoln's focus shifted to affirming the Constitution, arguing, persuasively, that secession was at bottom an attempt to overturn a democratic election. In his July 4, 1861, Message to Congress, the cause of liberty required him to mute the slavery theme altogether and instead to focus on restoring the Union. The logical connection of these three themes was this: to stop the expansion of slavery, the Republicans had to win control of the federal government; but once the election was won, the South had to be made to accept that result; and that could only be done by using military force against the states that refused to accept Lincoln as President. The defense of slavery had spilled over, as Lincoln had predicted earlier, into an assault against constitutional government. At this point the fight for liberty could be conducted as a fight to restore the Union. The cause of Union, less controversial in the North than the opposition to slavery expansion, was indispensable for Lincoln. It enabled him to establish the broadest possible ground for opposition to secession, which he needed in order to win the support of as many Northern Democrats as possible, as well as the loyalty of the border states who had not yet seceded but where slavery was legal.

The third and last part of *A New Birth* is chapter 7, a return to theory, on Calhoun's political thought. Jaffa's theme is that this greatest theoretical antagonist of Lincoln had developed a powerful proslavery argument grounded in the rejection of Locke and reason. Calhoun's rejection of Jefferson and the founding principles had been a remote consequence of Rousseau's attack on the Enlightenment. Jaffa argues that Calhoun was a representative of radical modernity, partly Machiavellian, but mostly Hegelian, Romantic, "Social Darwinist" (before Darwin), and Progressive. In Calhoun's thought, historical necessity and the idea of progress replace reason and prudence. Individual rights are replaced by the rights of "minorities," but only those minorities who are strong enough to force the majority to accord them recognition. (In other words, there are no minority rights for slaves and others who are too weak to fight back.) Jaffa concludes that Calhoun's rejection of reason and consequent deferring to history means in effect that might makes right, and that success replaces nobility, in Calhoun's post-Hegelian understanding of politics. Such an argument, whether intended or not, opens the way for the limitless violence of twentieth-century tyranny, as well as the redefinition of liberty in twentieth-century liberalism.

The bulk and scope of this book make it hard to see Jaffa's overall argument, especially on the political theory of the founding, although he returns to it again and again. Jaffa's constant repetition of the central themes of that theory may create the impression that his argument is straightforward and even noncontroversial. It is not.

Some readers may find useful an overview of Jaffa's account of the founding principles. I will present it as a response to several common arguments against those principles.

Objection 1: Locke, the Founders, and Lincoln claimed that all men are created equal. But the classics denied this, for the obvious reason that human beings are unequal in many ways. Some of those ways are politically decisive. Aristotle argues, quite explicitly, that some men are by nature slaves, and it is better for them to be ruled for their own good.

Jaffa's answer: The proof that all are created equal is that although many men are better than other men at the tasks of ruling, it is also true that "all men have been endowed . . . with a nonangelic nature." That is, "the nature of rulers and the nature of the ruled is one and the same" (p. 69). Of course, strictly speaking, the natures of men are not the same. The Founders admitted the reality of great inequality among men, but they denied that human wisdom and virtue can be depended upon when the best men are given absolute power over other men. Men are never perfectly wise, nor are they ever free from self-interest, so the nature of rulers and ruled is the same *in the crucial respect*. To illustrate this point, Americans in the founding era frequently compared human to divine

rule, which they cheerfully admitted was absolute monarchy without the consent of the governed. The reason that the rule of God was acceptable was that He, “being possessed of infinite wisdom, goodness, and rectitude, is alone fit to possess unlimited power” (statement of the citizens of Malden, Massachusetts, May 27, 1776, in Jaffa, 2000, p. 122). Finally, even if we admit that there is some tiny number of men who are sufficiently godlike that they could be trusted with absolute power without consent, it would still not establish a politically relevant claim. For “Plato’s *Republic* is imaginary precisely because, according to Plato himself, philosophers do not wish to rule, and anyone wishing to rule is not a philosopher. Anyone who asserts a right to rule on the basis of his claim to wisdom is accordingly condemned in advance as a charlatan by philosophy itself. . . . Philosopher-kings are not possible, and genuine philosophers will always prefer a regime of equality under the law” (p. 339). Jaffa is saying that the classical argument for government without consent is refuted by the classics themselves, leaving us with the conclusion that the esoteric teaching, as it were, of the classics is that all men are created equal! I believe that this conclusion, while highly paradoxical, is defensible. Strauss in fact suggests something similar in the passage from *Liberalism* quoted earlier.

Objection 2. The Founders’ doctrine of rights has no substantial doctrine of duties. The Founders’ theory depends on the idea of a state of nature, which by definition is a state in which moral obligation does not exist.

Jaffa’s answer: This is a gross misunderstanding of the theory of the founding. “Jefferson’s doctrine, which is the American doctrine in its purest form, is a doctrine of natural rights under natural law” (p. 26). For Jefferson the laws of nature, which prescribe what we must do and not do, are prior to the rights of nature: as Jefferson wrote, “rights are derived from the laws of nature” (*Summary View*, 1774, in Jaffa, 2000, p. 25). These laws teach us that each person owns himself, and no one may rightfully take away another person’s life, liberty, or property except in defense of his own. Jaffa writes, commenting on the difference between today’s liberalism and the Founders’ position:

Atheistic nihilism transforms the “bourgeois” and highly moral individualism of the American Revolution into something entirely different. The older individualism was based on the idea of unalienable rights endowed by man’s Creator. Such rights were not unconditional. They were to be exercised only in accordance with the laws of nature and of nature’s God, which were moral laws. Rights and duties were in a reciprocal relationship. But the nature revealed by modern science—the unconditional basis of the belief in Progress—was that of mindless matter, a source of power to be commanded, not a source of morality to be obeyed. From here on, “rights” would be understood as the unconditional empowerment of the individual to do as he pleased. Self-realization became the code word for the new morality. The human self, however, was no longer understood to be made in the image of God, since God was dead. Self-realization was in fact only the correlate of the new atheism. As

there could no longer be any distinction between man and God—a distinction as fundamental to the Declaration of Independence as it was to the Bible—there could be no distinction between base and noble desires. All desires were created equal, since they were all equally the desires of that highest of all authorities, the self-creating self. Each human being was to be his own God, obeying only those restrictions that were enforced upon him by the fact that he was not yet himself the universal tyrant. In time however Science would enable everyone to act as if he was the universal tyrant. . . . The essence of the new Liberalism was to make each human being, as far as possible, a universal tyrant within his own world, commanding all the pleasures possible in that world, and emancipated from everything except those limits upon his power that Science had not yet conquered. Thus would the return to a Garden of Eden—but one in which there would be no forbidden fruit—be accomplished. (P. 95)

I have quoted this at length to show how far, in Jaffa’s mind, the thought of the founding is from that of modern liberalism. Jaffa is fond of quoting Jefferson’s saying that the people “are inherently independent of all but moral law.” The natural right to liberty is not a right to be immoral. Jaffa is also fond of Washington’s parallel statement, in his First Inaugural, that “there is no truth more thoroughly established than that there exists in the economy and course of nature an indissoluble union between virtue and happiness; between duty and advantage; between the genuine maxims of an honest and magnanimous policy and the solid rewards of public prosperity” (p. 10).

Jaffa addresses the state of nature question head on in his commentary on Calhoun. That doctrine, Jaffa argues, is not meant to be a claim about the history of primitive man. It is therefore not about premoral or prerational man. “What man is by nature, or in the state of nature, is in no way hypothetical,” Jaffa writes. “The state of nature is then an inference from what we see with our own eyes. . . . The state of nature was nothing other than the conceptual form of the understanding of what made government legitimate” (p. 413). It is the state in which every man lives when he reaches the age of reason and consent. When he ceases to be a child, he must then decide whether to exercise “a right, which nature has given all men, of departing from the country in which chance, not choice, has placed them, of going in quest of new habitations, and of there establishing new societies, under such laws and regulations as to them shall seem most likely to promote public happiness” (Jefferson, *Summary View*, in Jaffa, 2000, p. 9). In short, the state of nature is the condition of man outside of government, in which he has full use of his reason, and is therefore fully bound by the law of nature, which Jefferson calls the “moral law.”

Objection 3. The doctrine of the founding is antireligious or indifferent to God. The founding was based on the Enlightenment, which saw religion either as superfluous or as the enemy of human freedom.

Jaffa’s answer: It is true that the Founders’ doctrine requires the separation

of church and state, although not in the extreme sense in which liberals today understand that phrase. If government is to be guided by the law of nature, and that law says nothing about revealed religion, then it follows that it would be an injury to molest anyone for his supposedly incorrect mode of worship. The doctrine of compact and limited government was developed in part as a response to the religious quarrels that dominated British history in the centuries leading up to the American Revolution. By excluding coercive control over religious orthodoxy from the legitimate scope of government, the adherents of compact theory hoped to solve a problem that had plagued European politics since Roman times. The doctrine did succeed in driving religious persecution out of American politics. The Founders' principle of religious liberty enabled men of different religions to live together in civic harmony: "No head of state before President Washington in 1790," Jaffa writes, "had ever addressed Jews as equal fellow citizens" (p. 260).

The doctrine of toleration might be thought to lead to, or flow from, a denial of the divine. But Jaffa emphatically denies this. There is a theology of the founding, not one that is to be enforced by punishment of unbelievers, but certainly one that government has every right and duty to support by its own words. "The doctrine of natural law and natural rights enshrined in the Declaration is a doctrine of natural *and* divine right. . . . It cannot be emphasized too often that the doctrine of the Declaration requires a people who can appeal truthfully and sincerely to the supreme judge of the world for the rectitude of their intentions. According to Jefferson and Lincoln, failure to respect the rights of others may disqualify one for the protection of one's own rights and expose one to the wrath of the God who is their source" (pp. 122–23). Jaffa does not even attempt to demonstrate the truth of this claim. His argument, following Jefferson, is that the natural rights doctrine will only be properly held and understood by a people who believe in a God who favors liberty and justice over slavery and injustice. The political theology of the South, which is a major theme of Jaffa's book, relied on a reading of the Bible that justified slavery as a matter of divine right (God's supposed condemnation of Noah's son Ham and his descendants to permanent slavery). Such a theology is incompatible with the principles of the founding, for it denies the fundamental principle of a free society: all men are created equal.

Perhaps Jaffa's strongest argument in support of the compact theory of the founding is to be found in his analysis, at the end of chapter 2, of Christianity and politics. "Because God or the gods were held to be the ultimate source of all law in the ancient world, the question of political obligation, as we understand it, never arose" (p. 138). Whatever the form of government, the gods would be there to support it and demand obedience to the law. This changes with Rome's destruction of the world of the polis. Now one universal empire replaces the multitude of cities, and the idea of one God replacing the multitude of pagan deities follows almost naturally. This was the situation at the time of the birth

of Christianity. Jesus said, "Render therefore to Caesar the things that are Caesar's, and to God the things that are God's." This statement, Jaffa writes, "placed the authority of Jesus behind the separation of church and state." But it took a long time. "Although Jesus himself, in his response to the Pharisees, clearly distinguishes God's authority from Caesar's, we find his disciples identifying the two. . . . [In their biblical Epistles,] Paul and Peter do not envisage the least participation in government by the governed, or anything resembling the rule of law. We find, therefore, the complete depreciation of the political as a continuing concern of human life" (pp. 144–45). Given this state of things, the worth of republican government could only be reestablished through a new doctrine of divine right, one that is universal like Christianity, but which teaches that all men are created equal. That was the doctrine of the founding. This view, in turn, became a widely accepted interpretation of the Bible: "That the equality in the sight of God ought to be translated into a political structure of equal political rights has come to be regarded as the most authentic interpretation of the Gospel itself" (p. 151).

Jaffa argues that the theory of the founding was a doctrine of divine right—the divine right of the people to form their own government. This doctrine was developed as a means to restore an appropriate latitude for prudent statesmanship in a world where Christian politics had created great disorder: "When church officials seek office, or when offices depend upon church officials, both state and church are corrupted. The purity of religion is defiled and the purpose of government is perverted" (p. 149). Christianity had created the problem, but Christianity had also pointed to the solution: the separation of "God" from "Caesar," church from state. To be effective, that separation had to be understood, not as a rejection of Christianity, but as its fulfillment. For this reason, the preachers of the American Revolution, Protestant, Catholic, and Jewish, fully supported the principles of the founding. The Reverend Samuel Cooper of Massachusetts, in an important address published by the legislature of that state, spoke as the great majority of Americans of all religions thought:

We want not, indeed, a special revelation from heaven to teach us that men are born equal and free. . . . These are the plain dictates of that reason and common sense with which the common parent of men has informed the human bosom. It is, however, a satisfaction to observe such everlasting maxims of equity confirmed, and impressed upon the consciences of men, by the instructions, precepts, and examples given us in the sacred oracles; one internal mark of their divine original, and that they come from him "who hath made of one blood all nations to dwell upon the face of the earth" [Acts 17:26], whose authority sanctifies only those governments that instead of oppressing any part of his family, vindicate the oppressed, and restrain and punish the oppressor. (In Jaffa, 2000, pp. 370–71)

Once that change in the self-understanding of Christianity had occurred, as it had by the time of the American Revolution, Lincoln could make full use of Christian texts and imagery in his defense of liberty (p. 258). At the end of the

First Inaugural, and more emphatically in the Second, Jaffa writes, “The American people are a religious people, whose every thought and action presuppose a God who rules the world” (p. 349).

Objection 4. The theory of the founding is Lockean, and as such it leads to the degradation of man. It lowers the goals of political life from virtue (as the classics taught) to mere preservation (as Locke taught).

Jaffa’s answer: First, the religious dimension of the founding, as well as its doctrine of toleration, elevate political life, paradoxically, by removing from it a leading source of its degradation, namely, torments and persecution arising from aristocratic pride and conviction of one’s own sanctity. Second, the Founders’ doctrine elevates politics by announcing a sacred cause, the cause of liberty, which elicits the noble virtues of statesmanship and citizenship. Third, the compact theory, and the politics based on it, challenge men to live up to its moral demands, which require service to others, not to lower themselves to self-indulgence. Money and commerce are not the highest thing in America, because these things are means to safety and happiness. The latter require virtue and honor.

Those who complain that the Founders reduce life to mere preservation neglect what the Founders actually say. The purpose of politics, as the Declaration says, is “safety and happiness.” These, Jaffa writes, “are the alpha and omega of political life.” That is, “liberty and property come to sight as means to the preservation of life, but their enduring worth is in the service, not of mere life, but of the good or happy life. The natural wants of man from which society springs are not random but ordered. And it is the natural order of these wants, directed toward their corresponding natural ends, that constitute the architectonic principles of a society arising out of compact, properly understood” (p. 50).

The lowness of the immediate purpose of government (security of life, liberty, property) should not be misunderstood. It is in the service of the high. Jaffa writes:

By preventing us from injuring others, the law makes it possible for us to have others as friends. In acting consistently with the rights of others and in not injuring others, we are habituated to virtue. By becoming good, we are enabled to be friends of the good, and having good friends is the most indispensable of the means to happiness.

The tyrant, subjecting others, cannot be a friend. Although surrounded by others who pretend to be his friend, he is without friends. But without friends, life is not worth living. Once we understand this, upon which our well being depends, we understand our interest in the rule of law. We understand as well why it is against our interest to become tyrants as why it is in our interest to prevent tyrants from ruling us. That is the argument of Plato as well as of Aristotle. It is the argument of the American Revolution, of the Declaration of Independence, of the Gettysburg address. Yet it is an argument held in almost no esteem today. (Pp. 82–83)

Objection 5. The Founders’ doctrine tries to do away with the need for reason in political life. Necessity—the immediate necessities of life, that do not allow us the luxury of quarreling over the good life—replaces reason as the ground of politics.

Jaffa makes almost the opposite argument. In his discussion of Calhoun, Jaffa shows that it was he who truly did believe that necessity, the historical process, leading to the growth of true liberty, was the only means by which the good could be obtained. The Founders and Lincoln all believed that reason discovers the true principles of justice, and prudence determines the means by which society should be ordered in accord with those principles (pp. 414, 427, 432, 451). This argument presupposes that reason, merely by observing and thinking about the human condition, really is capable of discovering truth. Jefferson’s Virginia Bill for Religious Freedom begins with the statement, “Almighty God hath created the mind free,” and Jaffa argues that that assertion is the ground of the whole doctrine of the founding (pp. 42, 120). The truth that all men are equal is “an assertion at once of a necessity and of a freedom inherent in reason and nature. It implies a freedom in the mind to apprehend truth, and a necessity in nature, a necessity external to the mind, that determines what the truth is. In the last analysis, freedom is the ability to be determined by the truth” (p. 71). Calhoun rejects the Founders’ reason and nature. He trusts in necessity because he believes in history and progress. Reason is now understood, as in Hegel, to emerge out of a deterministic historical process, not a faculty of man that enables him to see things as they are.

Objection 6. The Founders’ doctrine is too dogmatic. Its insistence on equal rights for all denies the necessary flexibility for statesmanship and prudence. It was against this doctrinalism that Burke and his successors understandably revolted.

Jaffa’s answer: Lincoln’s whole action against slavery, starting in 1854, is one long refutation of this claim. The doctrine of the founding gives us, like the classical teaching on the best regime, only the goal to be strived for. The United States Constitution itself, in which slavery had to be tolerated as a necessary evil, shows that the principles did not, and should not, lead automatically to a dogmatically determined outcome.

Jaffa writes, “Although the rights of man exist wherever man exists, the existence of a people sufficiently enlightened, and having the courage and the means to act on them, may be rare” (p. 123). The necessity that a people be a “good people,” one that accepts the moral and divine law stated in the Declaration, means that just government by consent will probably always be the exception rather than the rule in human affairs. The best regime of the founding, and the best regime of the classics, are both elusive, although not impossible. Prudence is indispensable in this state of affairs, to achieve the closest approximation to perfect justice available in the circumstances.

There is one respect in which Jaffa does not hesitate to criticize the Founders, or at least Jefferson. That is, as we have already noted, his optimism, his Enlightenment faith that reason would prevail if only the people hear it. "All eyes," Jefferson wrote, "are opened, or opening, to the rights of man" (quoted on p. 111). Lincoln knew better. The dark and tragic vision of the Second Inaugural brings that out forcefully. For Lincoln, the principles of the founding are true, but they will always be challenged by their enemies, unreason and injustice. There is no escape from human ills. Partisanship can never be eliminated from political life, no matter how well a political regime is founded. The best that can be hoped for is some approximation of the best regime by a rare coincidence of a "good people," prudent statesmanship, and good fortune.

One of Jaffa's distinctive themes in *A New Birth* is his running comparison of the theory of the founding with Christianity. The modern doctrine of social compact had been invented, in part, to solve the problem of religious persecution that plagued Christendom throughout its history. That problem seemed to have been solved by America. But the quarrel leading to the Civil War, and the terrible bloodletting that followed, tell the story of religious warfare renewed. I say "religious" because the doctrine of the Declaration, as Jaffa stresses, is one of divine right, and the disagreement over slavery was partly based on a different reading of the Bible. Jaffa writes, "The doctrines of the Declaration had, in this crisis, become the cause of division, in much the same way that Christian doctrine had been the cause of division in the religious wars of Europe" (p. 352). Lincoln did everything he could, short of abandoning the sacred cause of liberty, when he assumed the presidency, to calm Southern fears and restore the union. He failed. "And so," writes Jaffa, "a different text proved prophetic for the event: 'Do not think that I have come to bring peace on earth; I have come not to bring peace but a sword. For I have come to set a man against his father, and daughter against her mother, and daughter in law against her mother in law; and a man's foes will be those of his own household.' And so the war came" (p. 355, quoting Matthew 10:34-36). Jaffa is saying that the principles of the Declaration, no less than of Christianity, were then, and always will be, the source of hatred and warfare among men. The "better angels of our nature" exist, but they too often fall silent in moments of great passion. The task of statesmanship is coeval with man. The principles of justice will always be hated by those who believe that they will profit by injustice, or by those whose imaginations have been deluded through the manipulations of sophists or demagogues.

"Noble things are hard," and a republican government that protects the rights of all is among the hardest of noble things. "Divine right," as Locke observed, is more "natural" than freedom. It is an expression of the eternal serpent, "you work, I eat," and the doctrine of human selfishness. Freedom is the product of art and statesmanship at its highest. *A New Birth* shows the difficulty, and the nobility, of the statesmanship of freedom.

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