Remarks Delivered at a Reception in Honor of Harry V. Jaffa at the Kirby Center for Constitutional Studies and Citizenship, Hillsdale College, Washington, D.C., February 25, 2015

by Edward J. Erler

Harry Jaffa spent nearly his whole career uncovering and articulating the natural right foundations of the American regime. Leo Strauss, Jaffa's teacher, wrote in the context of the "crisis of the West." Jaffa extended Strauss's analysis to the "crisis of America." Indeed, it was his contention that "the crisis of American constitutionalism *is* "the crisis of the West." This view, which he vigorously defended in the 1990s, seems particularly apt today as America enters what some constitutional scholars have called the "post-constitutional era" and the West lapses into paralysis, uncertain of its purpose and unable or unwilling to defend itself against its enemies. I believe that Jaffa's book—*A New Birth of Freedom*—would have been the book—or nearly the book—that Strauss would have written had his concern been the "crisis of America" rather than the "crisis of the West." Many of Jaffa's critics who are also followers of Strauss have argued that America is a thoroughly modern regime based on low but solid principles—it is Machiavelli and Hobbes, they argue, who are the progenitors of America. Modernity, of course, attacked both reason and revelation as sources of moral and political authority; the American Founding, according to Jaffa, appealed both to reason and revelation as its authoritative ground—"the laws of Nature and Nature's God." Thus the Founding, properly understood, provided the greatest antidote to the corrosive forces of modernity. This was Jaffa's deepest reason for defending the Founding. His text was the Declaration of Independence—his books and articles are the *Guide of the Perplexed* for those who seek to understand America's origins and its principles.

Jaffa's best known book is *Crisis of the House Divided*, published in 1959. This work is justly

celebrated because it records Jaffa's discovery of the crucial importance of the Lincoln-Douglas debates. Historians and political scientists, of course, had acknowledged the existence of the debates, but no one before Jaffa had thought they were worthy of extended or serious analysis. He found in the debates the key to understanding the very soul of American politics. The Lincoln-Douglas debates revealed, more than anything, what was essential and what was unique about America.

Douglas was well on the road to convincing the nation that slavery was not a moral issue. It was, he said, merely a matter of whose interest was being served. In a democracy that interest should be decided by the majority, and if the majority decided that slavery was in its interest, then slavery was a positive good; if the majority decided it was not in its interest, then it was not a positive good. This was positivism and a clear rejection of the principles of the Declaration, which saw natural rights as an objective truth deriving from the "Laws of Nature and of Nature's God." Needless to say, based on the principles of natural right these truths are not subject to majority rule. Jaffa pointed out that the argument between Lincoln and Douglas was the same argument as that between Socrates and Thrasymachus in Plato's *Republic*. The questions of justice are always the same; they are always a part of the human political condition however much they may arise from different historical circumstances. It was this revelation that led Jaffa to treat the Lincoln-Douglas debates as a Platonic dialogue. Jaffa remarked, however, that Plato never answered the question whether natural right could ever become political right. That question was answered by Aristotle. There was no essential disproportion, Aristotle maintained, between the requirements of natural right and the demands of politics. What allowed natural right to become a part of political right was prudence or practical wisdom. Even though theoretical wisdom is superior, prudence acts independently and rules the sphere of politics, the sphere of the human things as such. Jaffa understood this to be the meaning of the famous discussion of natural right in the *Nicomachean Ethics,* where Aristotle said that natural right was a part of political right. Political right takes priority over natural right, which, Aristotle

continued, had everywhere the same force or power but was everywhere changeable. In other words, natural right became political right only through the mediation of prudence. And it was this crucial element that Jaffa discovered in the American Founding—but he discovered this only after the publication of *Crisis*.

Crisis remains popular among the followers of Strauss because in many respects it is an orthodox "Straussian" work. It treats the American Founding as something radically modern. America's philosopher was John Locke, who was himself a radical modern—if somewhat more cautious than his boisterous predecessor Thomas Hobbes. In *Crisis* Jaffa argued that Lincoln had re-founded America on a higher level, introducing Aristotelian principles to counter the corrosive elements of modernity that he believed had been present in the Founding. In order to magnify the importance of Lincoln's role as re-founder, Jaffa undoubtedly downplayed the enduring significance of the Founding principles as understood by the Founders themselves. But what Jaffa later emphasized in his work was another, more important point that he learned from Strauss: that the primary distinction in philosophy was not the quarrel between ancients and moderns, but the "the theological-political question."

It is evident that the only form of natural right available to the Founders after the advent of Christianity was egalitarian natural right; natural right was forced to speak the language of natural law. Jaffa never tired of arguing that the Declaration's ground in the "Laws of Nature and Nature's God" presents both a doctrine of natural right and divine right, and he steadfastly maintained that the American Founding presented a resolution of the theological-political problem on the level of politics and morality by giving equal claims to reason and revelation: the First Amendment, he pointed out, protects the free exercise of religion equally with freedom of speech and press. We know, of course, that on the highest level—the question of what perfects or completes human life—the competing claims of reason and revelation cannot be resolved by reference to either. Reason cannot refute revelation, nor can revelation deny claims of reason.

Leo Strauss maintained that the "unresolved contest" between reason and revelation "is the secret of the vitality of Western civilization." Jaffa argued that the American Founding preserved this "vitality" by excluding sectarian issues from political life. "In this way," he wrote, "the very differences between Jerusalem and Athens become the highest ground of harmony and peace." If Jaffa is correct—as I am convinced he is—the American Founding (and only the American Founding) preserves the "vitality of the West."

Beginning with the publication of *Conservatism and the American Founding* in 1984, and culminating in the publication of *A New Birth of Freedom* in 2000, Jaffa began to revise his opinion about Lincoln and the American Founding. Those "classical" elements that he once attributed exclusively to Lincoln's "re-founding," he came to see as elements intrinsic to the Founding itself, a founding that Lincoln "perpetuated" and extended but without changing its essential character. Throughout *New Birth,* Jaffa argued that Lincoln held no political principles that he did not derive—either directly or indirectly—from Jefferson, and that both were remarkably Aristotelian in their view that human happiness was the end of politics and that prudence measures human goodness solely by its consequences. This change represents what Jaffa himself called his "second sailing," much of which has been, in addition to an emphasis on the "theological-political problem," a new understanding of Locke's role in the Founding.

Locke is still the philosopher of the Founding, but understood now the way the Founders understood him. Strauss, of course, revealed that Locke was a radical modern who rejected both reason and revelation as the foundation of moral and political life. But Strauss discovered the radically modern Locke buried deep in his esoteric message. There is no evidence, however, that the Founders read Locke the way Strauss read him. Indeed, there is no evidence that anyone ever read Locke with the care and penetration that Strauss did. If we are to understand the Founders as they understood themselves, it is necessary to read them in the light of the exoteric Locke, not the esoteric Locke revealed by Strauss. And it is through their understanding of the conventional,

exoteric Locke that the Founders understood the laws of nature in a perfectly Aristotelian sense. Thus Jefferson's pairing of Aristotle and Locke in his famous statement that the Declaration is "an expression of the American mind" which draws "all its authority" from "the harmonizing sentiments of the day, whether expressed in conversation, in letters, printed essays, or in the elementary books of public right, as Aristotle, Cicero, Locke, Sidney, &tc." is rendered perfectly intelligible when considered from the point of view of political statesmanship.

Jaffa's last pronouncement on the subject was startling not only because of its simplicity but also because of its profundity. Writing as he frequently did of the second paragraph of the Declaration, he made this remark:

> After speaking of our unalienable rights, to secure which governments are instituted, the Declaration of Independence goes on to say that "whenever any form of government becomes destructive of these ends, it is the right of the people to alter or abolish it, and to institute new government, laying its foundations on such principles and organizing its powers in such form, as to them shall seem most likely to effect their safety and happiness." Notice that in the second institution, or reinstitution of government, "rights" become "ends." And these ends are now said to be "Safety" and "Happiness," the alpha and omega of political life in Aristotle's *Politics*.

In a conclusion that is not entirely hyperbolic, Jaffa asserts that "in one form or another, this metamorphosis of Lockean 'rights' into Aristotelian 'ends' (or vice versa) recurs in many of the documents of the Founding." In something I published not long ago, I remarked that minds of a peculiar structure—those who believe that there is an impenetrable wall separating the thought of ancients and moderns—might object to Jaffa's attempt to identify Aristotelian elements in the Declaration, to say nothing of his conflation of Aristotle and Locke. Indeed!

A recent critic of Jaffa berates him for ignoring Tocqueville who, our critic claims, is the author of the best book on democracy. Tocqueville, we are assured, provides a useful corrective to the Founding, warning us of the manifold dangers of dedicating a regime to the principle that "all men are created equal." Tocqueville argues that equality can lead to either liberty or tyranny. But understood as a principle of natural right or natural law, equality can lead to tyranny only if it is wrongly understood. Tocqueville, of course, never understood equality as a principle of natural right, but as a fated fact. The decision for equality and democracy had been decided by history: he wrote that "it is the most uniform, the most ancient and the most permanent tendency that is to be found history."

Tocqueville demonstrated great foresight about many aspects of American politics, particularly the centralizing tendencies of the administrative state. He even predicted civil war. But he thought it would take the form of slave rebellions against masters. Tocqueville could not have predicted that in America a civil war would be fought among the master class over the morality of slavery, because he ignored the Declaration in his analysis of America. In the form that it took, Jaffa wrote, the Civil War was "inconceivable without the Declaration of Independence."

The modern followers of Tocqueville—many of them Straussians—seem to believe that the Founders' dedication to the principle of equality will inevitably degenerate into permissive equality where liberty will be sacrificed to an overweening desire to abolish all distinctions in the name of equality. At almost the same time that Tocqueville was publishing *Democracy in America* (1835, 1840) Lincoln gave his own critique of permissive democracy in two notable speeches, the Lyceum speech in 1838 and the Temperance Address in 1842. Probably not since the Ninth Book of Plato's Republic has there been such
a devastating critique of permissive democracy as these two closely argued speeches, both of which are subjected to detailed analysis in *Crisis*. But Lincoln's solution, unlike that of

Tocqueville, was an appeal to America's "ancient faith"—the principles of the Declaration of Independence.

We learn from Aristotle that any regime can be revolutionized. Democracies can become oligarchies, oligarchies can become tyrannies, and so on. If the different regimes are to be stable, regime principles must be guarded, so that the slightest departures are either anticipated and prevented in advance or, if not anticipated, then corrected as quickly and unobtrusively as possible. Revolutions in regimes are not inevitable; they occur when those who are tasked with guarding the regime principles become lax and negligent, or no longer understand the foundations of the regime, or believe the regime's first principles are no longer true or viable. In our constitutional system, the task of guarding regime principles was assigned as a general matter to the Supreme Court—it was to serve as the nation's Nocturnal Council, if you remember Plato's *Laws*. But the Supreme Court has long ago ceased to serve that function. Jaffa often argued—following Lincoln—that the Constitution is unintelligible without an understanding of the principles of the Declaration. Without the Declaration, it is merely process without purpose. Only one Justice on the current Court, Justice Thomas, understands this—and he attributes his understanding to Jaffa. Another Justice who has the reputation for conservative jurisprudence—even original intent jurisprudence—says the Declaration is merely "fluff."

America has certainly become a permissive democracy driven by permissive egalitarianism. But this did not result from the principles of the Declaration of Independence—as another conservative jurisprude, the late Judge Bork, insisted. Rather, it resulted from a perversion of those principles. It was historicism, positivism and nihilism, all elements foreign to the principles of natural right as they were understood at the Founding that led to permissive democracy. The antidote is to return to the Founding principles, the genuine principles of natural right, "our ancient faith," just as Lincoln and Jaffa have advocated. Our critic to the contrary notwithstanding, Tocqueville did not write the best book on democracy. That book was written

by Harry Jaffa. It is *A New Birth of Freedom: Abraham Lincoln and the Coming of the Civil War.*