

Jaffa versus Mansfield: Does America Have a Constitutional or a “Declaration of Independence” Soul?

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What were the original principles of the American Constitution? Are those principles true? Many historians and political scientists write about the first question.

Scholars are never shy about telling us what happened in the dead-and-gone eighteenth century. But few of them think it is even worth discussing whether the Founders’ principles are true. For example, in a review of my book *Vindicating the Founders*, historian Joseph Ellis accuses me of having committed “sins of presentism.” My error, as he cleverly puts it, is believing “that ideas are like migratory birds that can take off in the eighteenth century and land intact in our time.” Ellis does not even attempt to refute the Founders’ principles or their arguments, summarized in my book, regarding property rights, women’s rights, and welfare policy. For him, it is enough simply to dismiss my endorsement of their arguments and ideas as “bizarre.”¹

But what if *some* ideas—I mean true ones—really are like migratory birds that can land intact in any century? What if the principles of the founding are as true today as they were two centuries ago? In other words, why does Joseph Ellis, and the whole chorus of the academic establishment, assume that the principles of the founding are not true today?

Students and admirers of Leo Strauss are among the few political scientists who write seriously about whether the Founders’ principles are true. Strauss made this possible by convincing them that political philosophy in the classical sense is possible, that human reason may be capable of discovering the truth about the good society. Anyone who

approaches the Founders from that perspective is likely to be open to their way of thinking, which took for granted that reason can figure out the principles of justice by observing and reflecting on the human condition.

Strauss argued that the principles of classical political philosophers such as Plato and Aristotle remain the standard for us today. When his students approach the founding, therefore, they tend to judge it against the standard of the classics. This immunizes them against becoming mindless cheerleaders who uncritically celebrate the founding. It also prevents them from arrogantly assuming that just because we happen to live in the twenty-first century, we are wiser than those in the supposedly less-enlightened past.

Harry Jaffa and Harvey Mansfield are two of the ablest among those whose study of America has been shaped and helped by what they learned from Strauss. Both men are patriots. Both admire the Founders and the Constitution. Yet their views on the matter of human equality appear to be complete opposites. Jaffa affirms Lincoln’s sweeping claim that the self-evident truth that all men are created equal is “the father of all moral principle” in the hearts of Americans.² But Mansfield says that “All men are created equal” is only a “self-evident half-truth,” and he argues that constitutionalism today is harmed rather than helped by appeals to equality.

Who is right, Jaffa or Mansfield? or neither? An adequate answer to these questions would require a much fuller treatment than I can present here. But I can give at least an overview, so that readers may have a sense of what is at stake and how to think about the different approaches of these two outstanding scholars.

At a conference on modern freedom in Claremont in 1996, Mansfield and Jaffa had a vivid exchange—it was also, at least on one side, rather testy and acrimonious—that briefly addressed this difference. Their discussion was memorable for those in attendance, but it has since faded into a somewhat vague oral and e-mail tradition. What fol-

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lows is meant to explain to a wider public what that evanescent explosion of passion and reason was about.

There are two main obstacles to the understanding of the Jaffa-Mansfield disagreement.

First, in some circles Jaffa has a reputation as a mere polemicist rather than a serious scholar. Many who might learn from him, therefore, ignore him with contempt. That is unfortunate, because Jaffa is America's outstanding defender of the natural right teaching of the Declaration of Independence. He deserves to be heard.

In contrast to Jaffa, Mansfield is more widely respected among academics. But how well understood is his teaching? Several of his admirers who read an earlier draft of this piece thanked me for making his position clear to them. Mansfield is very smart, of course, but his thought is not always easy to understand. Mansfield's elusiveness is the second obstacle to understanding. I hope to clarify it here.

I admire both men. Jaffa was one of my two main teachers in graduate school. (Harry Neumann was the other.) He is a friend whose words and writings I have always found to be provocative and insightful. His recent book *A New Birth of Freedom* (2000) is a magnificent achievement, even better than his brilliant *Crisis of the House Divided* (1959).³ It may be the best book ever written on democracy and America.

But I also admire Mansfield. He is a serious thinker who has taught important lessons to his readers. He has worked out an impressive defense of American constitutionalism, based on long years of meditation on Aristotle, Machiavelli, Locke, and other philosophers, along with *The Federalist* and contemporary political events and writings. Mansfield firmly refuses to succumb to what Strauss called the "unmanly contempt for politics"⁴ that is always a temptation for men of letters. Moreover, he is a glorious thorn in the side of the conventional wisdom. To their dismay, he reminds the dominant intellectual establishment every day, with his intelligence and wit and learning, that there is still a fractious fraction of Harvard that resists its agenda. In spite of the disagreements that I will spell out, I agree with Mansfield on many topics both theoretical and practical, including the judgment, which I once heard him pronounce, that *The Simpsons* is the best thing on television. So I intend to be as dispassionate as I can in this comparison of the two men. My account aspires to be, as Tacitus would say, *sine ira et studio*, without anger and without bias.

Leo Strauss once called for "unhesitating loyalty to a decent constitutionalism and even to the cause of constitutionalism."⁵ Jaffa and Mansfield both follow Strauss's dictum. But they disagree strongly about both how to understand and how to defend constitutionalism.

For Jaffa, the cause of constitutionalism requires fidelity to the principle of the Declaration, that "all men are created equal." Jaffa, like Lincoln, believes that the Constitution is the picture frame of silver, which "was made . . . to adorn, and preserve" the "apple of gold," that is, the principle of "liberty to all" expressed in the Declaration.⁶

For Mansfield, constitutionalism requires fidelity to the Constitution, to the institutions and mores created by the Constitution, and a willingness to turn away from the principles of the Declaration, so that they can be kept in check.

Mansfield therefore celebrates "America's Constitutional Soul," to quote the title of one of his books. His hero is Tocqueville. For Jaffa, America has a "Declaration of Independence" soul. His hero is Lincoln.

THE CASE FOR MANSFIELD

Mansfield's account of the American founding starts with social compact theory, most authoritatively articulated by John Locke. The Founders, Mansfield says, believed in a state of nature theory and put it into the Declaration. They established a constitution that was intended to secure the rights announced in the Declaration. Their hope, Mansfield argues, was to establish an impartial regime and to end once and for all the long, dreary history of class warfare and religious persecution.

The Hobbesian idea, which, according to Mansfield, became the American idea, was this: The most persistent source of partisanship is disagreements about the good life, especially about the salvation of the soul. Hobbes and the Founders thought that if men can be taught to focus on the fear of death, then, as Mansfield writes, "we will be too frightened to insist on our political opinions" about the good life. We will agree on a nonpartisan goal of politics: liberty and peace.⁷

Mansfield adds that the regime based on this principle aspires to be nonpartisan not only in regard to its goal but also in regard to who rules. Mansfield argues that Locke, following Machiavelli, believed he had invented a kind of government in which no one really rules. This government never does what *it* wants; it is always carrying out the will of somebody else, namely, of the people. And its policies are also beyond the control of government in a deeper sense: They are dictated by the necessities of nature, by the urgent needs of the body.⁸

But Mansfield says—and he believes he is following Aristotle here—that this hope of nonpartisanship is a vain dream. People will always disagree about the good. Even a regime that is designed to be nonpartisan will become as partisan as any other. This, Mansfield believes, is the lesson of Tocqueville's *Democracy in America*, a book that he and his wife, Delba Winthrop, translated. In their introduction, Mansfield and Winthrop call Tocqueville's book "the best book ever written on democracy and the best book ever written on America." According to Tocqueville, as summarized by Mansfield and Winthrop, America is "middle class, thus timid and mediocre, and lacking in both virtue and greatness." It is true that Tocqueville does not scorn this bourgeois way of life in the manner of Rousseau and Stendhal. But he does argue that a democratic nation, in which public opinion dominates, becomes a partisan political regime "without meaning to be." The majority comes to believe in "the infallibility of majority reason." Yet the majority is a "collection of self-consciously weak individuals." The democratic citizen is at once proud of his independence and aware of his weakness. "In this extremity," writes Tocqueville, "he naturally turns his regard to the immense being that rises alone in the midst of universal debasement." Mansfield and Winthrop explain: "The

immense being—replacing God—is the state.” Democratic citizens, therefore, “will find it quite reasonable to trade much, if not all, of their independence to a government that can meet these needs for them.” Men will be reduced, in Tocqueville’s memorable metaphor, “to being nothing more than a herd of timid and industrious animals of which the government is the shepherd.” Far from being a nonpartisan regime, American democracy will transform the lives of its people to the point where they will be robbed of “several of the principal attributes of humanity.”⁹

Mansfield, following Tocqueville, is saying that whatever may have been the nonpartisan hope that the Founders had from the idea of equality, the reality is that that idea leads to a political order in which a part rules in the name of the whole, but not in the interest of the whole. If this is true, then democracy, as Aristotle had said, is a regime in which the vulgar many dominate and oppress the wealthy, educated, and virtuous few. Ambitious liberals today, Mansfield argues, who should be on the side of “tolerance for unequal status,” instead imprudently side with the majority, demanding ever greater equalization and leveling.¹⁰

That is what Mansfield means by his remark, much criticized by Jaffa, that “a regime based on the self-evident half-truth that all men are created equal will eventually founder because of its disregard of the many ways in which men are created unequal. . . . [I]t will be subject to revolution by the partisans, in this case those of the few, whom it ignores.”¹¹

CONSTITUTION AS REMEDY FOR NATURAL RIGHTS

Far from despairing over this gloomy picture, Mansfield believes that America has a resource within itself that greatly mitigates the problem that I have just sketched. That resource is the Constitution.

In Mansfield’s words, “although the Constitution is based on the state of nature, it is not a natural constitution in the sense of being determined by nature. It had to be constituted, and the choice between the Federalists and the Anti-Federalists was a real one. . . . [A]fter the Constitution was constituted, it produced a way of thinking—a culture—favorable to itself.” That means “the American regime is not simply a theoretical, impartial republic modeled on mankind’s necessities. It has its own character and has made its own culture.”¹²

I paraphrase: The Constitution was written to secure the natural rights named in the Declaration. But once written, it took on a life of its own, independent of the doctrine that gave rise to it. The Constitution, and no longer the principle that “all men are created equal,” now became our regime, our *arche* or principle, our authoritative beginning that shapes and forms us and makes us what we are. We now understand ourselves (or once did), Mansfield argues, as a constitutional people, no longer as a revolutionary people standing up against oppressive government in the name of our natural rights. In this respect, says Mansfield, America moves beyond Locke and even against Locke, whose *Two Treatises* concluded with a warm celebration of the right of revolution. “To a constitutional people,” writes Mansfield, “overturning the Constitution is unthinkable. On this point

The Federalist is opposed to John Locke, who speaks rather lightly of establishing a new constitution.”¹³

According to Mansfield, the result of this transformation from a natural-rights republic to a constitutional republic is that our politics are much less vulnerable to the kind of destructive moralism that we see in the French Revolution. The French, in Mansfield’s view, made the mistake of taking the idea of equality too seriously. They tried to “finish” the modern revolution initiated by Locke and the other adherents of social compact theory. They failed to put an end to their revolution by constitutionalizing it, as the American Founders did. As a result, the French lived out the full destructive implications of the modern doctrine, whereas the Americans were spared that destruction. In Mansfield’s analysis, sober forms take the place of dangerous moral absolutes. That is, the form and formalities of constitutionalism take the place, in America, of insatiable appeals to a standard of “natural rights [held] over the government.”¹⁴

Mansfield believes that to the extent that Americans understand themselves as a constitutional people, rather than a people dedicated to the proposition that all men are created equal, they will be better able to appreciate the need for inequality in human life. So he concludes that we should celebrate the Constitution, and everything that goes with it, such as forms, formalities, and responsibility. These things are admittedly not quite virtue, but they point us in the direction of virtue. That is about as far as one can go in that old-fashioned direction under the conditions of the modern state. As for the Lockean theory of the founding, Mansfield does not deny that it was there, but he thinks that it would be unwise to make too much of it, especially in our time, when all the forces seem to be pushing us in the direction of more and more equality.

MANSFIELD’S APPEAL TO CONSERVATIVES

Mansfield’s analysis of America is appealing in two respects. First, it appears to solve a problem posed by Leo Strauss, namely, the claim that the political theory of Locke leads to the “degradation of man” and the inference, not explicitly drawn by Strauss but perhaps implied, that America too is therefore degraded. Locke’s doctrine is bad, according to Strauss, because it denies the importance of virtue and nobility; because it teaches that the self-interested pursuit of wealth can replace virtue; because Locke makes man, and not man’s end, the ground of moral obligation; and finally, because in Locke’s degrading vision, life becomes “the joyless quest for joy.”¹⁵ Mansfield’s interpretation of the founding—constitutionalism as a kind of liberation from the straitjacket of Lockean political theory—is attractive to those who believe these terrible things about Locke. It seems to make it possible for Americans to embrace the cause of constitutionalism as noble and honorable.

Second, Mansfield seems to have a persuasive diagnosis, attractive to conservatives, of where modern liberalism has come from and what to do about it. Where did liberals ever get the idea that the lives of women should be made as much as possible like those of men? Why do people think that it is wrong for government to discourage childbearing outside of

marriage? Who persuaded them that the poor, whether they choose to work or not, should be made comfortable through transfers of income and goods from the middle class and wealthy? Why did they adopt the view that government, in Tocqueville's disparaging description, must become "an immense tutelary power . . . which alone takes charge of assuring their enjoyments and watching over their fate, [and which] seeks only to keep them fixed irrevocably in childhood"?¹⁶ Mansfield's implied answer, following Tocqueville, is: These ideas are the natural consequence of a political order based on the claim that all men are created equal and possess equal rights to life and liberty. As he writes in his article on affirmative action, the right to acquire property, held equally by all, is perceived by many blacks to be "merely formal." With lower average incomes than those of other Americans, they conclude that "rights are not rights unless one can exercise them effectively." Mansfield argues that this demand for the effectual exercise of rights, which leads to the demand for the shrinking or even the abolition of the private sphere to promote equality of results, is where liberalism has come from.¹⁷ In his view, the demand wells up, as it were, spontaneously from the democratic soul. What to do about it is also clear from his account: We should reaffirm our constitutional soul. We should try to revive our somewhat moribund "constitutional culture" by speaking less about equality and more about the Constitution and the rightful place of inequality in our nation.

THE CASE FOR JAFFA

Mansfield says, then, that the theory of the American founding is both untrue and harmful. It is untrue because there is no such thing as nonpartisan politics, because human beings are created unequal in important ways. It is harmful because the idea of equality produces ever more radical demands to deny all politically relevant differences among human beings, while it encourages government to intrude ever more aggressively into the private sphere.

Jaffa answers that the theory of the founding is true, because human beings really are equal in the sense that no one has the right to rule another without that other's consent. And the equality idea, Jaffa argues, far from being harmful, is our best ground for the revival and continuation of a decent constitutionalism in the modern world.

EQUALITY

Jaffa believes that the theory of the American founding is true because slavery is always evil. No man is born the natural ruler of any other man. Mansfield says that "all men are created equal" is a self-evident half-truth because men are equal in some respects and unequal in others. But no sensible person—and certainly not Jaffa—would dispute that human beings are unequal in many ways. For Jaffa, the meaning of "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." Everyone being subject to the same selfish passions, no one should be trusted with absolute power. 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. As the town of Malden, Massachusetts, wrote in 1776, the reason that the rule of God without our consent is acceptable, but that the rule of man without our consent is not, is that God, "being possessed of infinite wisdom, goodness, and rectitude, is alone fit to possess unlimited power."¹⁸

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 still would not establish a politically relevant claim. For, Jaffa writes,

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.¹⁹

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! This paradoxical claim should not perhaps come as a surprise. For Jaffa had said many years ago that according to Aristotle no normal human being is a natural slave.²⁰

So far the argument for equality is that humans, however rational they may be, are also passionate. But the other side of this argument is equally important: However passionate humans may be, they are also rational. According to Jaffa, the equality of all is not a conclusion reached by contemplating the state where people shivering with fear think only of the most urgent necessity, mere life, as Mansfield maintains. 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."²¹ The idea of equal rights is a conclusion drawn by reason from contemplation of human greatness, not human misery. John Adams wrote, "Let us see delineated before us the true map of man. Let us hear the dignity of his nature, and the noble rank he holds among the works of God—that consenting to slavery is a sacrilegious breach of trust, as offensive in the sight of God as it is derogatory from our own honor or interest or happiness."²² The Declaration begins with rights, then speaks of a "duty" to revolt against tyrannical government, and concludes with a mutual pledge of "sacred honor." Similarly, Madison says in *Federalist* 39 that an "honorable determination," not submission to the logic of the fear of violent death, led Americans to embrace what they called "the sacred cause of liberty."²³ These notions are far from the timid, calculating Hobbesianism that Mansfield associates with the founding principles.

According to Jaffa, the equality principle of the Declaration, understood in its true sense, takes full account of the

ways in which human beings are both equal and unequal. Virtue and excellence are far from being denied a place in democracy. On the contrary, the Founders thought of republican government as a regime where genuine excellence could shine forth. Jefferson wrote, “May we not even say that that form of government is best that provides the most effectually for the pure selection of these natural aristoi into the offices of government?” (Leo Strauss quoted this statement to illustrate the classical, Platonic-Aristotelian approach to politics.) Jaffa comments: “The American Revolution, taking its bearings from nature, meant to prevent the artificial or accidental circumstances of wealth or birth from confining the virtuous and talented, whatever their origins, to the circumstances into which they were born.”²⁴ Far from being the enemy of excellence, a nation that secures civil and religious liberty is its truest friend. Norman Podhoretz once remarked, quite sensibly, that America is a country where it does not matter who your father was. What counts is what you do.²⁵

Contrary to Mansfield’s assertion that “all men are created equal” leaves out the wealthy, in practice the American doctrine of equal rights and unequal results really did reconcile rich and poor. Poor Americans, especially immigrants, used to have confidence that even if they did not get ahead, their children would, once they learned English and got an education. There was very little of the class hatred and lower-class sense of being stuck permanently in a subordinate status that has poisoned European politics over the past two centuries. For this reason, doctrines of socialism and communism have never taken root in America the way they have in Europe.

CHRISTIANITY AS PROBLEM

Jaffa’s most elaborate argument for the founding principles can be seen in his analysis of Christianity. Jaffa and Mansfield share a profound appreciation for classical political philosophy. Jaffa and Mansfield agree that Christianity posed a problem unanticipated by the classics. The question is what the classical approach would call for in Christian times. Aristotle’s teaching on politics had to be modified, in Jaffa’s view, to respond to this problem.

The problem in question is well understood by Mansfield. He explains it nicely in his *Taming the Prince*. The advent of Christianity meant that the classical approach to politics, or what was believed to be the classical approach, no longer worked. As Mansfield presents it, the classics taught that the purpose of politics is virtue, and virtue should be promoted by government, acting emphatically as a ruler that goes down into the soul to shape it in the ruler’s image. In practice, under medieval Christianity, “Aristotle’s kingship . . . [was] claimed by the pope,” because priests and theologians claimed to be the experts on virtue, and the pope was king of the priests and theologians. But this priestly virtue is, according to Mansfield, following Strauss, at once too weak and too cruel to support sound politics. It is too weak because charity replaces the moral virtues, especially those tough virtues such as justice and courage that require rough treatment of evil men. It is too cruel

because persecution is thought to be necessary, indeed mandatory, to save eternal souls.²⁶

Mansfield argues that Dante, Aquinas, and Marsilius all attempted to revive the Aristotelian approach in a way that would overthrow the priestly usurpation of virtue and rule. All three failed. Machiavelli’s response to the situation, in Mansfield’s analysis, was to abandon the Aristotelian ideal of kingship and redefine the scope of politics as a response to life’s most urgent necessities, not as a means to achieve the highest good.

Jaffa agrees with Mansfield’s analysis of Machiavelli’s reasons for opposing the classics, but Jaffa draws a different conclusion. For him, the modern turn, at least in its Lockean version, was absolutely necessary on Aristotelian grounds. That is, because a decent constitutionalism could no longer be achieved on the basis of a politics of virtue—assuming it could ever be achieved on that basis—Jaffa concludes that Locke was right to promote the state of nature doctrine as a new way to understand the foundation of political right. In this sense, Jaffa writes, “The state of nature is not an opposition to Aristotle but a response to a condition that did not exist for Aristotle.”²⁷

Jaffa develops this thought at the end of chapter 2 of *A New Birth of Freedom*. In the ancient city, Jaffa says, the gods were always the gods of the city. So there was no question, in the minds of the citizens, that the laws were rooted in the divine. In the world of Christianity, however, God was now the God of all mankind, no longer the exclusive God of this or that city or nation. Locke’s argument—that human law is grounded on the law of nature, which is also the law of God—settled the question of political obligation in this new condition. And the new doctrine settled it in such a way as to deny the authority of priests and ministers to override or undermine the authority of a government based on consent and devoted to securing men’s natural rights.²⁸

Jaffa knows, of course, that the state of nature doctrine taken literally *is* opposed to Aristotle, because that doctrine teaches that the scope of politics must be limited to securing life, liberty, and estate, in place of the Aristotelian aspiration to virtue. But Jaffa means that the cause of virtue, or rather of happiness—which after all is for Aristotle the end of virtue—requires precisely this Lockean limitation on politics, a limitation that Aristotle opposed in his own time, but that Jaffa believes he would have supported in Locke’s time, had he been alive to face the altogether new problem of Christian politics. In support of his argument, Jaffa reminds us that Aristotle himself said that natural right is changeable.²⁹

Moreover, Jaffa points out that the Founders rarely if ever had a kind word to say about Hobbes, whom Mansfield treats as almost equivalent to Locke when he discusses the natural rights theory of the founding. Most Founders praised Locke almost without reservation (along with classical writers such as Cicero), but they utterly rejected the moral teachings of Machiavelli and Hobbes. They did not think of the state of nature as an amoral condition in which everything is permitted. Instead, Hamilton stated the consensus of the Founders when he denounced Hobbes’s “absurd and impious doctrine” that “there is no virtue but what is purely artificial.” For the Founders, Locke’s law of

nature was a genuine moral law, binding on everyone in or out of civil society.³⁰

CHRISTIANITY AS (PART OF THE) SOLUTION

We have seen how Christianity—the Founders would say Christianity wrongly understood—created a political problem unanticipated by Aristotle, and how social compact theory responds to that problem. But Jaffa goes further: Christianity rightly understood has within itself doctrines that made the Founders' theory not just plausible but obligatory for Christians.

Mansfield appears to miss this point. "Hostility to religion," he writes, referring to Hobbes and Locke, "produces the constitutional distinction between state and society, in order to prevent the state from trying to save our souls in accord with the demands of religion." According to Mansfield, Locke makes "the chief work of reason the exclusion of revelation from political life."³¹

Mansfield would be correct if Christianity rightly understood mandated persecution of non-Christians and the rule of the godly over the ungodly without their consent. But the Founders, following Locke, argued that this theology of oppression was a misinterpretation of Christianity, designed to promote the interests of priests and aristocrats. For Jaffa and the Founders, "the commandments to do unto others as you would have them do unto you and to love one's neighbor as one's self were inconsistent with human slavery." "That the equality of human souls in the sight of God ought to be translated into a political structure of equal political rights" came to be regarded "as the most authentic interpretation of the Gospel itself" in the founding era and throughout most of later American history. God himself demands that we respect each other's rights.³²

Locke's theological project, far from being animated by "hostility to religion," as Mansfield claims, was based on the opposite insight, that the vast majority of men cannot be expected to live morally without religion. Locke writes, "you may as soon hope to have all the day-laborers and tradesmen, the spinsters and dairymaids, perfect mathematicians, as to have them perfect in ethics" by discovering moral truth through their own reasoning. "Hearing plain commands is the sure and only course to bring them to obedience and practice. The greatest part cannot *know*, and therefore they must *believe*." These plain commands, Locke says, are provided by Christ, our king and our savior.³³

Locke's teaching, which was embraced by almost all the leading politicians and preachers in the founding era, interpreted both revelation and reason as supporting the rights of mankind, religious toleration, government by consent, and the moral virtues of courage, moderation, justice, and honesty. Far from being excluded from political life, revelation as interpreted by Locke is an indispensable part of Lockean politics. Jaffa emphasizes in *A New Birth of Freedom* that the doctrine of the Declaration of Independence is one of both natural and divine right—the divine right of the people to form their own government without asking leave of aristocrats or priests.³⁴

Mansfield agrees with Locke's view that religion is necessary to support republican government: "If government is to remain limited, individuals must be able to rule themselves," he writes, and that leads to "a positive function for religion."³⁵ But because Mansfield does not see that Christianity came to be understood as mandating toleration and respect for other men's rights as a duty to God, he imagines an opposition between religion and social compact theory that does not exist.

MORALITY, RELIGION, AND THE EXERCISE OF RIGHTS

Mansfield claims that the Founders' principles are indifferent to morality and hostile to religion. Jaffa argues that their principles support both morality and religion.

Lockean politics, according to Mansfield, "is based on a conception of individual rights. . . . To respect individual rights, liberal governments must avert their gaze from the exercise of rights, since the meaning of a right is to leave its proper use to individual choice."³⁶

It is true, for the good reasons we have already noted, that Lockean politics does not aim as high as Aristotelian. But Mansfield overstates the difference when he says that government based on social compact theory must be indifferent to the way its citizens exercise their rights. For Locke and the Founders, when rights are exercised in a way that is manifestly injurious, government has a right and a duty to intervene. In fact, from the point of view of today's liberalism, Locke and the Founders would have to be described as "social conservatives."³⁷ It is not the Founders, but today's liberals, who argue (not altogether consistently) that government should "avert its gaze" from the way citizens exercise their rights.

Jaffa notes, correctly, that "[t]here is in Jefferson none of that radical individualism that sees the rights of the individual transcending and opposing the moral demands of a good society. The opposition between the demands of society and the rights of the individual, so familiar in our time, arose only as those rights were no longer understood to be natural rights subject to natural law."³⁸

If the Founders really believed that government has a duty to avert its gaze from the way rights are exercised, it would be wrong for government to ban homosexual marriage or the right to have sex with one's mother, father, sister, brother, son, or daughter. But Locke says that adultery, sodomy, and incest are called sins because "they cross the main intention of nature, which willeth the increase of mankind, and the continuation of the species in the highest perfection," which requires procreation and stable heterosexual marriages.³⁹ The Founders agreed.

Locke and the Founders say government may and should support religion, although it may not use coercion against those who fail to agree with the government's preferred religion. Liberals say government may not promote religion in any way.

Locke says (and the Founders agreed), "no doctrines adverse and contrary to human society, or to the good morals that are necessary to the preservation of civil society, are to

be tolerated by the magistrate.” James Wilson, a leading member of the Constitutional Convention of 1787, wrote,

[Nuisances are] crimes and offenses which attack several of those natural rights [of individuals. They are] a collection of personal injuries, which annoy the citizens generally and indiscriminately . . . [such] that public peace, and order, and tranquility, and safety require them to be punished or abated. . . . To keep hogs in any city or market town is a common nuisance. Disorderly houses are public nuisances. . . . Indecency, public and grossly scandalous, may well be considered as a species of common nuisance. . . . Profaneness and blasphemy are offences, punished by fine and by imprisonment.⁴⁰

Liberals today say all opinions must be tolerated (except perhaps conservative opinions that create a hostile environment in the workplace, or the opinions of rich people who spend “too much” money publishing their views of candidates for elections).

Morality and religion are indispensable conditions of freedom, as well as of human happiness, as founding era documents repeatedly proclaim. The Northwest Ordinance of 1787, for example, famously said, “Religion, morality, and knowledge, being necessary to good government and the happiness of mankind, schools and the means of education shall forever be encouraged.”⁴¹

One of Mansfield’s seemingly strongest arguments against the founding is his claim, “Our constitutional distinction between state and society seems to promote, if not require, a distinction between body and soul in which the soul gradually abdicates its ruling function.” Mansfield attributes to Locke the view that “[i]t is of the essence of the soul to be free to refuse responsibility for itself. It is not of the essence of the soul to cultivate or perfect itself, much less to obey God.”⁴²

But when Locke says, in the *Letter on Toleration*, that “the care, therefore, of every man’s soul belongs to himself,” he does not mean that the care of the soul is a matter of indifference. Locke’s point is the exact opposite. “Obedience is owed first to God, then to the laws,” he writes. Precisely because “those eternal things” are supremely important, everyone “ought to place all his care” in “investigating and performing” the things necessary for the salvation of the soul. Therefore “no one can so far abandon the care of his own eternal salvation as to embrace under necessity a worship or faith prescribed by someone else.” Madison began his celebrated *Memorial and Remonstrance* with the same affirmation: The free exercise of religion guaranteed in the Virginia Bill of Rights, he writes, is “unalienable . . . because what is here a right towards men, is a duty towards the Creator. . . . This duty is precedent, both in order of time and in degree of obligation, to the claims of Civil Society.” Locke and the Founders defended religious liberty not as a right to neglect God and the soul, but as a means to fulfill one’s duty to God for the sake of the soul.⁴³

IS THE CONSTITUTION ALONE SUFFICIENT TO PRODUCE A “CONSTITUTIONAL CULTURE”?

The social compact principles of Locke and the Founders are quite robust in their moral implications, as the above

quotations indicate and as the Founders’ words and deeds confirm.⁴⁴ Yet Mansfield says that the Founders departed from Locke when they argued that the people “must like their government, rather than merely obey it, if it is to be effective.”⁴⁵ But no one knew better than Locke the importance of public opinion, and the role of government in sustaining that opinion, for the success or failure of government (consider his reflections on the powerful “law of opinion” in his *Essay Concerning Human Understanding*),⁴⁶ and no one spent more time trying to do something about that in his own writings. All of Locke’s books on education, politics, knowledge, and Christianity supported the morality, theology, and politics of rational liberty.

Locke, the Founders, and Mansfield all agree on the need for a “constitutional culture” to sustain the Constitution. In *Federalist* 49, Madison argues that reason alone will not suffice to support the Constitution. Because “a nation of philosophers is as little to be expected as the philosophical race of kings wished for by Plato,” the Constitution needs “that veneration which time bestows on everything.” It needs “the prejudices of the community” on its side. Mansfield, following Madison, believes that this indispensable “constitutional culture” is produced by the Constitution itself, molding the nation through its institutions and forms into a body of citizens loyal to the Constitution.⁴⁷ Jaffa does not disagree with this as far as it goes, but he argues that the Constitution by itself is not enough to produce a culture favorable to itself. For that, Jaffa believes, one must add a reverence for the principles of the Declaration, imbued into the hearts and minds of the people through the teachings of politicians, scholars, and preachers.

Jaffa’s *New Birth of Freedom* shows that the culture produced by the Constitution by itself was wholly inadequate to the nation’s greatest crisis, which culminated in the Civil War. Both sides appealed to the Constitution with perfect sincerity. It was easy for each side to read the Constitution differently because of the different conceptions of justice that animated them. As Lincoln wrote on the eve of the Civil War, one side thought slavery was right and ought to be extended. The other thought slavery was wrong and ought to be restricted.⁴⁸ Because of the fateful compromises with slavery that had to be written into the text in 1787, the words of the Constitution could plausibly be read either way.

In his First Inaugural Address, Lincoln insisted that the fundamental institution of the Constitution was free elections. He pointed out that the South, by seceding, was trying to overturn an election of a president of whom they did not approve. But the South was deaf to Lincoln’s pleas, because they felt that they could no longer live as fellow citizens with people who condemned their core institution of slavery as evil. Lincoln was able to rally Northern opinion to the cause of liberty and save the Constitution by relentlessly recalling the principles of the Declaration that gave life to the Constitution. Without those principles, why should anyone have cared about whether or not an election was overturned, especially if that was the price of avoiding bloodshed? Why would anyone have cared about whether slavery was extended or not? Without Lincoln’s return to the culture created by the Founders through their constant

teaching of human equality, liberty, and government by consent, the Constitution would have died then and there.

Tocqueville's *Democracy in America* is an impressive book, but on this central theme of American political history it is grossly deficient. Tocqueville never mentions the Declaration of Independence anywhere in his two volumes. He never discusses the social compact theory of the founding. Whether that is because he did not understand it, or because he chose not to talk about it, does not matter. Tocqueville equated democracy in America with the rule of the majority. In his analysis, the only things that limited majority rule were religion and various other customs and institutions that survived from the aristocratic past. Tocqueville either never understood or never acknowledged that the Founders' theory of equality is a theory not only of rights but also of moral obligation. Slavery is a moral wrong for the same reason that the majority has a right to rule, namely, that no man is born a natural master or natural slave. Although Tocqueville visited America only thirty years before the Civil War, he never anticipated that the question of slavery would be resolved on battlefields where whites would kill whites. Instead, he incorrectly predicted a murderous race war between whites and blacks.⁴⁹

I remember vividly the first time that I heard Tocqueville criticized by a teacher I respected. I was a brand-new graduate student sitting in Harry Jaffa's office in Claremont in 1967. Jaffa's gist was that Tocqueville's book, although outstanding in many ways, does not understand the issues that led to the Civil War and therefore in the deepest respect does not understand America. It was not Tocqueville's "spirit of religion," or Mansfield's "constitutional culture," that saved the Constitution. It was America's still powerful fidelity to the principles of the Declaration, appealed to and enhanced by Lincoln's brilliant rhetoric and statesmanship, that saved the sacred cause of liberty in America.

ARISTOTLE AND THE PREPOLITICAL BEGINNINGS OF POLITICS

The perspective from which Mansfield evaluates the founding principles and finds them wanting is, or claims to be, that of Aristotle. Jaffa shares Mansfield's admiration for Aristotelianism. He was the author of the chapter on Aristotle in the earlier editions of the Strauss-Cropsey *History of Political Philosophy*, and *Thomism and Aristotelianism* was his first book. But Jaffa argues that Mansfield's understanding of Aristotle is deficient. For Jaffa, Aristotle is closer to Locke and the Founders than Mansfield's analysis would suggest.

Mansfield writes, "For Aristotle, there is no beginning behind or before politics that provides a guide or basis for politics; every beginning of politics is political."⁵⁰ Jaffa believes that this reading of Aristotle is too "Burkean." In fact, Aristotle may be said to affirm two beginnings "behind or before politics." First, his account of the origins of the city in *Politics*, book 1, is based on the natural needs of man, on necessity (as is Plato's in *Republic*, book 2). Necessity, like the Founders' state of nature, does indeed lie behind the city. Aristotle writes, in a sentence that Locke

would endorse completely, "the one who first constituted a city is responsible for the greatest of goods. For just as man is the best of animals when completed, when separated from law and justice he is the worst of all."⁵¹ As Hamilton wrote in *Federalist* 15, "Why has government been instituted at all? Because the passions of men will not conform to the dictates of reason and justice, without constraint."

Now it is true, as Mansfield points out, that for Aristotle, natural necessity cannot be the sole ground of politics.⁵² That is because the ultimate purpose of politics is not mere life, but the good life, as Aristotle says in *Politics*, book 3, and again in book 7. Nature does not produce this end spontaneously, as the acorn always, automatically produces the oak under the right conditions. In the human case, nature is not as "teleological" as one might wish. Human art must intervene. This point is supported by Aristotle's remarks at the end of his *Nicomachean Ethics*. The *Ethics* is Aristotle's account of the good life, the life of virtue plus equipment. But how do men become virtuous? Education. And where are they to get this education? From their families? Aristotle says that the family by itself cannot do the job, that the government of the city must help. This is the reason for his turn to politics at the conclusion of the *Ethics*: as a means to implement the end proposed in that book.

Therefore, concludes Jaffa, there is a second Aristotelian "beginning behind or before politics that provides a guide or basis for politics," namely, Aristotle's account of the good life in the *Ethics*.

Robert Kraynak, a student of Mansfield, argues that Mansfield's approach to politics "is properly called *prudential*—an approach which seeks the best possible means for attaining perfection of the soul in a world that is inherently imperfect because it is marred by fallible and sinful human nature." Mansfield derives this approach, says Kraynak, "from the classical prudence of Aristotle." Kraynak gives this helpful summary of Aristotle: "Aristotelian responsibility is the free choice of Nature's given end (happiness through virtue) which Nature points to but does not automatically guarantee."⁵³

Although I respect Kraynak's conscientious attempt to assimilate Mansfield to the classics, I do not think that Mansfield's own words support it, at least not to the extent that Kraynak claims. Unlike Aristotle, Mansfield tends to be quite reticent concerning "perfection of the soul," the ultimate ends of politics and nature. Instead, he prefers what I have called the more "Burkean" approach of thinking about politics from within an already existing political order and avoiding any appeal to standards outside of the political order. For Aristotle, prudence is the virtue that selects the right means to the right end. Prudence in this sense requires a "beginning behind or before politics," against which all political choices must be measured.

Mansfield does not deny that nature provides a guide for political life in Aristotle: "[T]o fail to return to nature would leave freedom an arbitrary quirk and without a guide."⁵⁴ But Jaffa would probably say that Mansfield does not adequately acknowledge the force of this admission, which implies that for Aristotle, no less than for Locke and the Founders, there is a standard before or behind the political by which

men should judge the political. The standard for rule is not the regime—that would be mere legal positivism—but principles rooted in an unchanging nature, discovered by reason.

Mansfield sometimes seems to say that the Founders would agree with him on his elevation of constitutional form over natural rights. He writes, for example, “According to Publius, the American Constitution puts its own form before the end it serves, because that form is part of the end.”⁵⁵ Mansfield’s claim would seem to be contradicted by his admission, already mentioned, that the Founders thought that the form of the Constitution was never more than a means to securing justice, which Madison calls “the end of government” (*Federalist* 51). Madison writes in *Federalist* 43 that “the transcendent law of nature and of nature’s God . . . declares that the safety and happiness of society are the objects at which all political institutions aim, and to which all such institutions must be sacrificed” (my emphasis). Unlike Mansfield, Jaffa never wavers in his insistence that the Constitution is only intelligible in light of its end, stated in the Declaration.

THE EQUALITY DOCTRINE: BOTH TRUE AND USEFUL

I began with a discussion of why Mansfield believes the principles of the founding are both untrue in themselves and harmful in today’s world. Up to this point in our consideration of the case for Jaffa, I have shown why Jaffa believes the principles of the founding are true. But he also argues that they are useful. In Jaffa’s view, prudence would endorse the Founders’ equality doctrine even if it were not true. The success of today’s liberalism in transforming the original meaning of the Constitution provides strong evidence for Jaffa’s claim.

Modern liberalism, as John Dewey and its other originators conceived it, is the enemy of individual rights in the Founders’ sense. Dewey goes so far as to say that in the context of the twentieth century, the Founders’ understanding of rights is evil. Dewey also disparages the importance of government by consent of the governed. Elections really do not matter for Dewey. Democracy is not about elections and consent, nor is it about securing the right to liberty. It is rather “that form of social organization, extending to all the areas and ways of living, in which the powers of individuals shall . . . be fed, sustained, and directed” by government.⁵⁶ Liberalism therefore prefers government by supposedly neutral, supposedly scientific “experts” largely insulated from the interference of public opinion and elected officials.⁵⁷ Liberals have long seen the Constitution, as it was originally understood, as their enemy; thus their indifference or hostility to “original intent.”

Believers in the Founders’ idea of equality, on the other hand, are the strongest supporters of the Constitution. Clarence Thomas is the Supreme Court justice who is most faithful to the text and spirit of the Constitution. The reason is that Justice Thomas, uniquely among those now on the Court, sees an intimate connection between the principles of the Declaration, which are the principles of individual liberty, and the text of the Constitution. In other words, Thomas respects the Constitution not just because it is a

law, not just because it was adopted by the majority, but because it is good. As Thomas explained in a 2001 lecture at James Madison University, “the principles upon which the American Constitutional order is based are universal principles, applicable to all people at all times.” He is interested in the constitutional text, he said, precisely for this reason.

When I was at EEOC [the Equal Employment Opportunity Commission, in the 1980s], rather than have speechwriters, . . . I had political theorists around me. And we would debate every day the political theory underlying the . . . founding of our country. . . . So we would think these things through—most of them happen to be Straussians—and read. . . . But what we were trying to do is think through what protects individual liberty most, and that began the interest [in federalism and the Constitution].⁵⁸

Two of these Straussians, Ken Masugi and John Marini, were students of Jaffa.

Liberals like Dewey understood perfectly that a people attached to the natural rights of the founding will also be a people respectful of the limited government established in the Constitution. If the Founders’ principles are rejected, and if the text of the Constitution is understood apart from those principles, then fidelity to the original meaning of the Constitution becomes a matter of indifference. The Constitution can then be used as an empty vessel into which the new, more advanced liberal view of justice can be poured. Liberals call this the “living” Constitution.⁵⁹ What they mean is that the Constitution as it was actually written is dead.

The problem of slavery, Jaffa argues, exposes more clearly than anything else the weakness of Mansfield’s position. The text of the original Constitution contained significant protections for slavery. That was the price the South demanded for its acquiescence in the Union. But if we read the Constitution as Mansfield recommends, namely, as a document whose authority is not derived from the idea of equal individual natural rights, we cannot know, on the basis of the Constitution, that slavery is wrong. We cannot know that anything is wrong. Quite the contrary: we might as easily conclude that slavery is right. For if Mansfield is right, a “constitutional people” does not aspire to look beyond the revered constitutional text. In this decisive instance, the Constitution contains not an ambiguity open to later distortion but a massive evil, a cancer that almost destroyed the Constitution in the Civil War.

The presence of slavery in the Constitution of 1787 appears to give liberals strong ground from which to reject the Constitution’s original meaning as a guide to the present. Al Gore suggested in the campaign of 2000 that George Bush’s “original intent” justices would be pro-slavery. Gore knew that this is literally false, but in a larger sense, Gore, like most liberals, believes that the original Constitution, as a product of a racist, sexist, elitist, and homophobic time and place, deserves to have no moral authority in today’s America. Bush could have answered that slavery was abolished by the Thirteenth Amendment, but the question would remain: Why should one respect the original meaning of any part of the Constitution of 1787? If one part of the Con-

stitution had to be changed, perhaps the rest is morally flawed as well. Can Mansfield provide any answer to the charge that the Constitution is hostile to equality rightly understood, without inconsistently appealing to the same natural rights that he argues ought to be forgotten?

Bush had no answer to Gore's accusation, but Jaffa does: The original Constitution was a noble but incomplete attempt to secure the equal right to liberty for all. Lincoln's career and the constitutional amendments that it inspired are at once the vindication and the completion of the original imperfect founding. The principles of the Declaration, in Jaffa's view, not only help us to understand the Constitution, but also helped us, in the nation's greatest crisis, to correct the Constitution and bring it into conformity with the true principles of justice.

Mansfield's argument courts a difficulty that can be seen more clearly in the traditionalism of men such as Russell Kirk, Willmoore Kendall, and Robert Bork. (In the *Claremont Review of Books*, Mansfield boldly calls for a rejection of the right of self-preservation embraced by Locke and the Founders. Instead, he argues, we should adopt Edmund Burke's affirmation of conscience and manly freedom, an affirmation that is no longer tied to the idea of individual natural rights. Mansfield writes as if the Founders—who, after all, pledged to each other their lives, their fortunes, and their sacred honor—had rejected conscience and manliness because of their belief in the individual right to life and liberty!)⁶⁰ Traditionalists of this stripe have a hard time answering a simple question: Why is the Constitution good? In their eagerness to cut the Constitution off from its original roots, which they take to be unhealthy roots, it no longer has a clear ground. And, given the internal inconsistencies of the 1787 Constitution on the slavery question, without this ground it is not clear that freedom is preferable to despotism and oppression. The price one always pays for attempting to avoid the dangers of extralegal appeals to a higher law is that prudence and choice are deprived of a star by which to steer. When liberals demand constitutional change in the name of an extralegal standard of justice, Mansfield and the traditionalists answer that it is wrong to go beyond the Constitution and the tradition. But when the liberals ask why it is wrong, what can they say, unless they follow Jaffa, Lincoln, and the Founders, and articulate a sound translegal standard of justice in light of which the Constitution is good—a standard in natural right?

When demagogues relentlessly attack the Constitution, appeals to the constitutional text and its forms are not enough. The liberal critique of the principles of the Constitution must be answered by a theoretical defense of those principles. The principles of the Constitution must be shown to be just, for as Madison says in *Federalist* 51, "Justice is the end of government. . . . It will ever be pursued, until it be obtained, or until liberty be lost in the pursuit."

As my final witness in favor of Jaffa's argument for the usefulness of the social compact theory, I will call on Mansfield himself. In his fine essay on affirmative action, he shows how the theory of the founding, based on the equal rights of all, necessarily and quite properly leads to unequal

results. He argues that if we are to remain a free, self-governing people, we must resist the demand to redefine rights as government benefits that override the consent of the governed. We must embrace the idea of limited government, in which everyone does not succeed to his heart's content, to secure our liberty on the basis of consent. Here, I say, Mansfield is doing what Jaffa says must be done: defending the Constitution by appealing to the social compact theory of equal rights, consent, and limited government. At the end of the essay, Mansfield speaks, as Jaffa himself might do, of "the basic principle of our Constitution."⁶¹ The puzzle is why Mansfield does not adhere to the logic of this article and agree with Jaffa that the Constitution can only be properly understood and defended on the basis of the political principles of the Declaration of Independence.

In *The Spirit of Liberalism*, published almost twenty-five years ago, Mansfield shows how the Declaration called forth genuine choice and a noble sense of honor. Locke's theory rightly understood, in Mansfield's earlier presentation, had an important place for men of outstanding virtue—of inequality. For who, if not the ambitious and educated, would form and staff the institutions that freedom establishes?⁶² Here too Mansfield came close to embracing the theory of the founding for himself. Kraynak develops this side of Mansfield's thought well in the essay quoted earlier, although he overstates Mansfield's sympathy toward the Founders' equality principle by failing to note his hesitations and inconsistencies.⁶³

I conclude that Mansfield's position on the theory of the founding is not completely coherent. On the one hand, he calls the principle of the Declaration a half-truth. On the other, he appeals on occasion to this very principle against the misunderstood equality of modern liberalism. The logic of these appeals, if it does not quite throw Mansfield and Jaffa into each other's arms, at least puts the two of them within hailing range. Perhaps that is one reason that students of Jaffa and Mansfield so often find themselves talking and arguing with each other. Their differences are real, but there is much common ground.

CONCLUSION

For Jaffa, the cause of constitutionalism, then, is inseparable from the cause of equal natural rights. Jaffa agrees with Mansfield that Americans are a constitutional people, but for Jaffa, the reason is that Americans are dedicated to the proposition that all men are created equal. That proposition mandates unwavering loyalty to constitutionalism and the rule of law, as Jaffa demonstrates, through the example of Lincoln, in *New Birth*.

Jaffa agrees with Mansfield that equality is an idea much abused in today's political lexicon. But he concludes that there is no point in attacking the idea of equality, especially when Americans have, in their own founding and tradition, a concept of equality that welcomes merit and inequality, in the achievements of those who excel and in the honors they earn.

Mansfield and Jaffa are two thoughtful warriors in the cause of constitutionalism. Whatever errors he has made,

Mansfield reminds us, properly, of the dangers inherent in the belief, promoted by today's liberals, that indiscriminate equality is the answer to all our problems. However much his manner may put people off, Jaffa reminds us, against many of today's conservatives as well as liberals, of the virtues of the principles that the Founders believed in and of the virtues of those great statesmen who articulated and defended those principles, which still provide us with an enduring standard to which the friends of constitutionalism can rally.

Those who are disgusted with the prevailing relativism and historicism that dominate academic discourse today can find in this magnificent debate a reliable guide back to the principles of the founding and the Constitution—principles rarely understood, often attacked by those who benefit from them the most, often incompetently defended by their well-wishing friends, and still perhaps the last best hope for rational liberty in our time or any other time.⁶⁴

NOTES

1. Joseph J. Ellis, "Who Owns the Eighteenth Century?" *William and Mary Quarterly* 57 (2000): 417–21. West, *Vindicating the Founders: Race, Sex, Class, and Justice in the Origins of America* (Lanham, Md.: Rowman and Littlefield, 1997).

2. Speech at Chicago, 10 July 1858, in *Collected Works of Abraham Lincoln*, ed. Roy P. Basler (New Brunswick: Rutgers University Press, 1953), 2:499.

3. My review of *New Birth* is a companion piece to the present article: "Jaffa's Lincolnian Defense of the Founding," *Interpretation* 28 (Spring 2001): 279–96, also available at www.claremont.org.

4. Strauss, *Liberalism Ancient and Modern* (New York: Basic Books, 1968), 24.

5. *Ibid.*, 24.

6. Lincoln, "Fragment on the Constitution and Union," c. January 1861, in *Collected Works*, 4:169.

7. "Returning to the Founders," *New Criterion* 12 (Sept. 1993): 50–51.

8. *Taming the Prince: The Ambivalence of Modern Executive Power* (New York: Free Press, 1989), 185, 195.

9. Alexis de Tocqueville, *Democracy in America*, trans. and ed. Harvey C. Mansfield and Delba Winthrop (Chicago: University of Chicago Press, 2000), editors' introduction, xviii, xxxviii, xli, lxii, lxx.

10. Mansfield, *The Spirit of Liberalism* (Cambridge: Harvard University Press, 1978), 14, 89.

11. "Returning to the Founders," 50.

12. "Returning to the Founders," 53.

13. "The Unfinished Revolution," in Ralph Hancock, ed., *The Legacy of the French Revolution* (Lanham, Md.: Rowman and Littlefield, 1996), 33.

14. "Unfinished Revolution," 22, 35.

15. Strauss, *What Is Political Philosophy?* (New York: Free Press, 1959), 49–50, and Strauss, *Natural Right and History* (Chicago: University of Chicago Press, 1953), 248–51. There is reason to believe that some of Strauss's apparently moralistic denunciations of Locke were deliberate exaggerations. See West, "Jaffa's Lincolnian Defense of the Founding," 279–80.

16. *Democracy in America*, vol. 2, part 4, ch. 5, 663.

17. Mansfield, *America's Constitutional Soul* (Baltimore: Johns Hopkins University Press, 1991), 93.

18. Jaffa, *A New Birth of Freedom: Abraham Lincoln and the Coming of the Civil War* (Lanham, Md.: Rowman and Littlefield, 2000), 69; statement of the town of Malden, Massachusetts, 27 May 1776, quoted in *New Birth*, 122.

19. *New Birth*, 339.

20. Jaffa, *The Conditions of Freedom* (orig. pub. 1975; repr. Claremont, Calif.: Claremont Institute, 2000), 20; a reprint of Jaffa's chapter on Aristotle in the first edition of *History of Political Philosophy*, ed. Leo Strauss and Joseph Cropsey (Chicago: Rand McNally, 1963).

21. *New Birth*, 50.

22. "Dissertation on the Canon and Feudal Law" (1765), in *Works of John Adams*, ed. Charles Francis Adams (Boston: Little, Brown, 1865), 3:462–3.

23. *The Federalist Papers*, ed. Clinton Rossiter and Charles R. Kesler

(New York: New American Library, 1999), no. 39, 208. "The sacred cause of liberty" is an expression that appears frequently in writings of the founding era, for example in Samuel West, *On the Right to Rebel against Governors* (Election Day Sermon, 1776), in *American Political Writing during the Founding Era*, ed. Charles S. Hyneman and Donald S. Lutz (Indianapolis: Liberty Fund, 1983), 1:438–9.

24. Jefferson, letter to John Adams, 28 October 1813, quoted in Leo Strauss, "On Classical Political Philosophy," in *What Is Political Philosophy?* 85–86. Jaffa, *New Birth*, 408.

25. Speech at a conference on "Our Country and Our Future: Educating Citizens for Democracy," sponsored by Empower.org, at the Hay-Adams Hotel, Washington, D.C., 13 June 2001.

26. *Taming the Prince*, ch. 5–6, esp. 115, 125; Strauss, *What Is Political Philosophy?* 43–44.

27. "The Decline and Fall of the American Idea," prepared for delivery at a conference on "Modern Freedom," Claremont McKenna College, 1996, photocopy, 87.

28. *New Birth*, 135–52.

29. "Decline and Fall," 85.

30. "Decline and Fall," 51, 81, 95, 101; *New Birth*, 382–3, 528 n. 17.

31. *America's Constitutional Soul*, 104; *Taming the Prince*, 209.

32. John Adams, *Dissertation on the Canon and Feudal Law*, 448–51; Jaffa, *New Birth*, 160, 370–71, 151.

33. Locke, *The Reasonableness of Christianity* (Washington: Regnery Gateway, 1965), para. 185, 212, 243.

34. *New Birth*, 122–3.

35. *America's Constitutional Soul*, 104.

36. *Taming the Prince*, xx.

37. Thomas G. West, "Vindicating John Locke: How a Seventeenth-Century 'Liberal' Was Really a 'Social Conservative,'" Witherspoon Lecture, Family Research Council, Washington, D.C., 23 February 2001, at <<http://www.frc.org/get/wt01f1.cfm>>.

38. *New Birth*, 26–27.

39. Locke, *Two Treatises of Government, First Treatise*, sec. 59; see also *Second Treatise*, sec. 56.

40. Locke, *Epistola de Tolerantia: A Letter on Toleration*, ed. Raymond Klibansky, trans. J. W. Gough (Oxford: Clarendon Press, 1968), 131: I have modified the translation here and elsewhere. *Works of James Wilson*, ed. Robert McCloskey (Cambridge: Harvard University Press, 1967), 2:670–71.

41. Quoted in Jaffa, *New Birth*, 105.

42. *America's Constitutional Soul*, 114.

43. Locke, *Letter on Toleration*, 127, 91, 123, 67. Madison, *Memorial and Remonstrance against Religious Assessments*, c. 20 June 1785, in *Writings* (New York: Library of America, 1999), 30.

44. See also West, *Vindicating the Founders*, ch. 2, 4, 6, and 7.

45. *Taming the Prince*, 251.

46. *Essay Concerning Human Understanding*, 4th ed. (orig. pub. 1700; New York: Oxford University Press, 1975), bk. 2, ch. 28.

47. "Returning to the Founders," 53.

48. Letter to Alexander Stephens, 22 Dec. 1860, in *Collected Works*, 4:160.

49. Thomas G. West, "Misunderstanding the American Founding," in *Interpreting Tocqueville's Democracy in America*, ed. Ken Masugi (Lanham, Md.: Rowman and Littlefield, 1991), 155–77.

50. "Returning to the Founders," 50.

51. Jaffa, "Decline and Fall," 82–85.

52. *Taming the Prince*, 31

53. Robert P. Kraynak, "The Care of Souls in a Constitutional Democracy: Some Lessons from Harvey Mansfield and Alexander Solzhenitsyn," in *Educating the Prince: Essays in Honor of Harvey Mansfield*, ed. Mark Blitz and William Kristol (Lanham, Md.: Rowman and Littlefield, 2000), 276.

54. *Taming the Prince*, 33.

55. *Taming the Prince*, 289.

56. Dewey, "The Future of Liberalism," *Journal of Philosophy* 22 (1935): 225–30, repr. in Howard Zinn, ed., *New Deal Thought* (Indianapolis: Bobbs Merrill, 1966), 31. Dewey, *Liberalism and Social Action* (orig. pub. 1935; repr. Amherst, N.Y.: Prometheus 2000), 15–16, 27, 39, 86.

57. Woodrow Wilson, "The Study of Administration," 1886, in *Papers of Woodrow Wilson*, ed. Arthur S. Link (Princeton: Princeton University Press, 1968), 5:363, 368–70; James M. Landis, *The Administrative Process* (orig. pub. 1938; repr. Westport, Conn.: Greenwood Press, 1974), 11–13, 23–24.

58. Thomas's speech, delivered on 15 March 2001, is at <<http://www.jmu.edu>>.

59. Democratic presidential candidate Al Gore, in the final debate before the Super Tuesday primary election, said: "I would look for justices of the Supreme Court who understand that our Constitution is a living and breathing document, that it was intended by our Founders to be interpreted in the light of the constantly evolving experience of the

American people." Quoted in Cal Thomas, "Constitution Evolution," <<http://www.nandotimes.com>>, 7 March 2000.

60. Mansfield, "'Those Hell-Hounds Called Terrorists,'" *Claremont Review of Books* 2 (Fall 2001): 6.

61. *America's Constitutional Soul*, 93–97.

62. *Spirit of Liberalism*, 80–81, 14.

63. Kraynak, "Care of Souls," 275–9.

64. Originally presented at a roundtable on Harvey C. Mansfield, sponsored by the Claremont Institute, at the American Political Science Association annual meeting, Washington, D.C., 1 September 2000. Other par-

ticipants were William Kristol (panel chairman), George Will, James Ceaser, and W. Carey McWilliams. The paper was revised and expanded after the panel.

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