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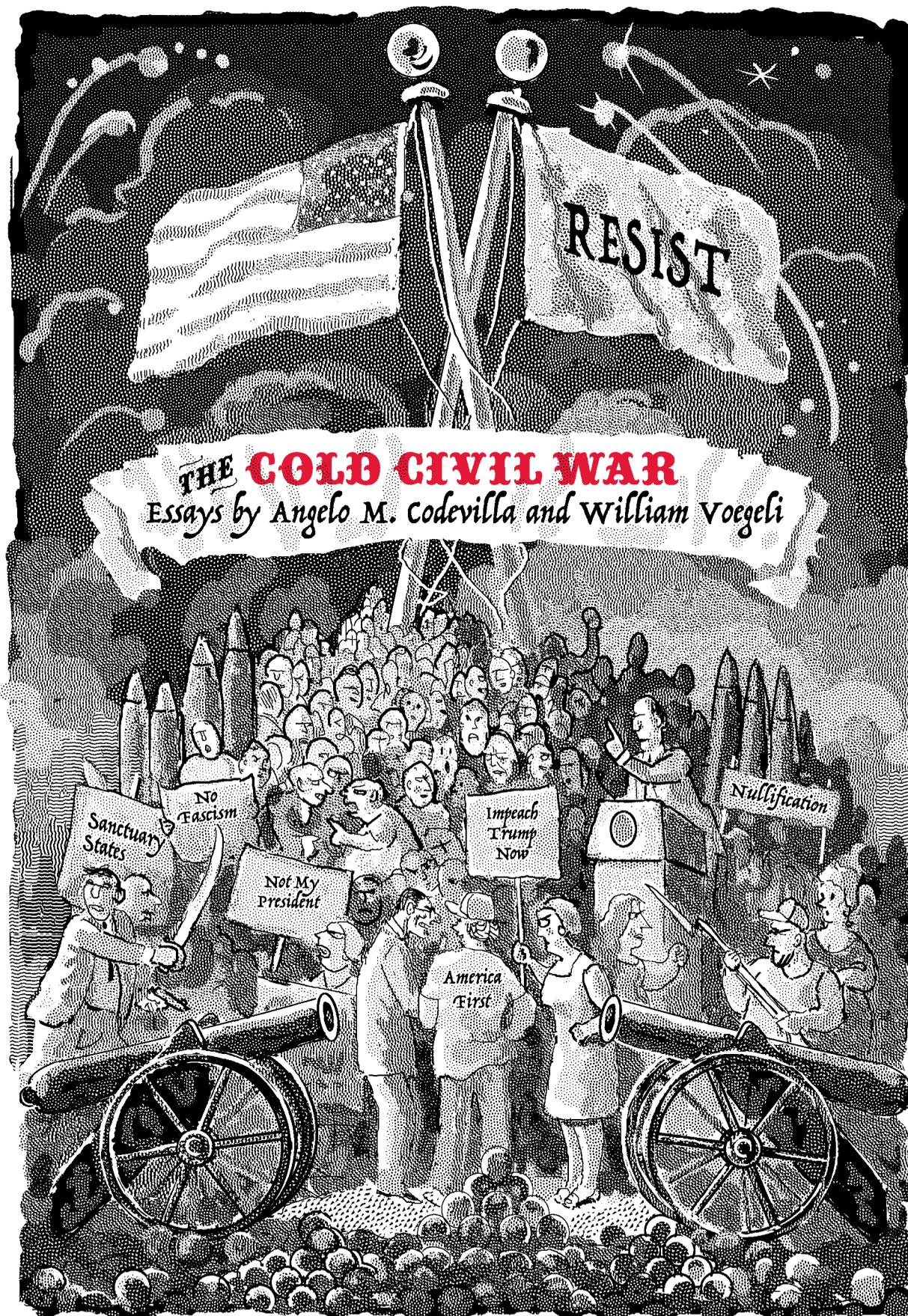
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Book Review by Matthew J. Franck

FRIENDS AND ENEMIES

Patriotism Is Not Enough: Harry Jaffa, Walter Berns, and the Arguments that Redefined American Conservatism,
by Steven F. Hayward. Encounter Books, 296 pages, \$25.99



IN HIS NEW BOOK, STEVEN HAYWARD sketches the larger-than-life careers, achievements, and quarrels of Harry V. Jaffa and Walter Berns, two early students of Leo Strauss, who were more than just gifted, prolific scholars of the American Founding and teachers of political philosophy. Lovers of country as well as of the truth—patriots who knew that *Patriotism Is Not Enough*, as the title has it (the phrase comes from Jaffa)—Jaffa and Berns also took their talents into the public square as commentators on, and combatants in, American political life. Friends when they were young, bitterly divided in later years, but with that antipathy beginning (it seems) to cool at the end, Jaffa and Berns died on the same day, January 10, 2015—reminding many people of the deaths on July 4, 1826, of John Adams and Thomas Jefferson, who similarly began as friends, became adversaries, and finally reconciled.

Will readers who knew little or nothing about these two men come away persuaded

that they “redefined American conservatism,” as the subtitle claims? That’s hard to say, when the competition includes Russell Kirk, Friedrich Hayek, Milton Friedman, Michael Novak, William F. Buckley, Jr., Richard John Neuhaus, Irving Kristol, and Norman Podhoretz—to name just a handful of intellectual figures, never mind the movement’s most noteworthy statesmen.

Yet Hayward, a visiting scholar at U.C. Berkeley’s Institute of Governmental Studies and the author of the superb two-volume study *The Age of Reagan* (2001-09), makes a good case that Jaffa and Berns—along with others in the “Straussian” orbit over the past half century—deserve credit for reviving serious study, in and out of the academy, of the political thought of the American Founders and of Abraham Lincoln. By doing so, these scholars made American conservatism more distinctively *American* by giving pride of place to the U.S. Constitution and its grounding in the Declaration of Independence. What’s

more, in a standout chapter on “The Administrative State and the End of Constitutional Government” (excerpted in the Winter 2016/17 *CRB*), Hayward shows how the students of Jaffa, Berns, and others have expanded their teachers’ arguments to grapple with modern America’s soft despotism.

LEO STRAUSS, WHO LEFT GERMANY IN 1932 and came to the United States five years later, did not say much in print about his adopted country, but his students (and their students) have had plenty to say, much of it truly groundbreaking. In the 1950s, when Jaffa and Berns were getting started, the founders and Lincoln were out of fashion among political scientists and historians alike—obsolete at best in a “progressive” age, retrograde at worst. The Constitution was a ramshackle Newtonian machine, Woodrow Wilson had insisted, unsuited for a streamlined Darwinian age. And it was made by anti-democratic oligarchs to boot, added



Charles Beard, J. Allen Smith, and Vernon Parrington. For its part, the Declaration proclaimed “truths” that no serious person in our relativist age could credit, Carl Becker asserted. And according to James G. Randall, Avery Craven, Allan Nevins, and Richard Hofstadter, the Great Emancipator, who was just as much a racist as his opponents, had blundered into America’s bloodiest war because his reckless ambition and opportunism made him unwilling to compromise on what should have been a minor policy dispute over slavery in the territories.

Into this obtuse, sclerotic consensus charged Strauss’s students. While Berns, Martin Diamond, Herbert Storing, and others excavated the original understanding of the Constitution and the contributions to political thought of *The Federalist* and the Anti-Federalists, Jaffa revolutionized Lincoln scholarship with his magisterial *Crisis of the House Divided* (1959), a book that every student of Lincoln’s words and deeds has had to reckon with ever since. These contributions did much, too, to straighten out the nascent conservative movement’s understanding of America, which had been ambivalent toward the founders and, certainly, toward Lincoln. Together, Strauss and his students also broke the stranglehold of the “behavioral revolution” on American political science, restoring the connections between the life of action and the life of the mind, and putting justice and statesmanship once again at the center of the study of politics. Anyone lucky enough to study with a talented teacher of the Straussian school—and I had five of them, none of them discussed in this book—knows the heady experience of grappling with the wisdom of great books and the actions of great men, and the lure of studying politics in the light they cast.

BUT BEGINNING IN THE LATE 1970S, AS anyone knows who has had a ringside seat at “Straussian fight club” (Hayward’s arch phrase), internecine warfare broke out among the first-generation Straussians, and the hostilities rippled outward to their students, with battalions divided into “West Coast Straussians”—so named because Jaffa taught at Claremont McKenna College in California—and “East Coast Straussians.” (The geography was never exact; “East Coast” usually included the University of Chicago, for example.) In part the battle lines were drawn over the legacy of Strauss, who died in 1973, and in part over differing interpretations of the American regime.

For the most part these battles have become formulaic and friendly among the

younger Straussians with the passage of time, and to some extent the disputes have died out altogether. But for the older generation represented in Hayward’s book by Jaffa and Berns, the bitterness lingered because much was at stake personally as well as intellectually and politically. And though he treads kindly and gingerly, Hayward cannot really avoid conceding that Harry Jaffa was very good at picking fights, personalizing them, and persisting in them.

HAYWARD IS WELL PLACED TO WRITE this book, having known Jaffa and Berns very well—Jaffa was his graduate school mentor, Berns his colleague at the American Enterprise Institute for many years—and his high regard for both of them is evident throughout. But Hayward was “more closely associated with Jaffa,” as he admits, than with Berns or anyone else he treats in the book, so it is not surprising that Berns vanishes for stretches at a time while Jaffa is never absent for long. Hayward scruples to

Hayward has laid out some of the most essential questions concerning what it is to be an American and a conservative.

be as fair as he can to the former and other erstwhile friends of Jaffa’s, but he comes down pretty decisively on his teacher’s side in the intellectual disputes he describes. Although he makes vital questions of political philosophy accessible and engaging to a general readership, Hayward is too close to Jaffa to take a sufficiently detached view of his work, and not close enough to Berns and the others to take a sufficiently sympathetic view of theirs. Thus Jaffa’s views are favored by default, while Berns’s are most highly praised when they most resemble Jaffa’s.

Consider, for example, the way Hayward describes Jaffa’s thought on Lincoln as going through “distinct phases of development over time.” Jaffa’s “initial interpretation” presented in *Crisis of the House Divided*, which “understands Lincoln as having completed or revised the Founding,” “clearly has defects,” says Hayward. In later essays and, finally, in his 2000 sequel, *A New Birth of Freedom*, “Jaffa no longer saw Lincoln as *modifying* the Declaration of Independence and the Found-

ing; he was *defending* [their] original meaning” (emphasis in the original). In other words, in Hayward’s account, Jaffa eventually came to a richer, better understanding of Lincoln. That’s a subtle treatment that takes Jaffa’s thinking seriously.

By contrast, when he takes up a shift over time in Walter Berns’s thought, Hayward reaches for the purely psychological-political explanation instead of considering, as with Jaffa, the possibility that Berns got better at his chosen craft, in this case, constitutional interpretation. Berns’s earliest professional publication had been a journal article on the notorious 1927 eugenic sterilization case, *Buck v. Bell*, in which he embraced the idea of substantive due process, which he later came to reject. “When asked later about his flirtation” with that idea, Hayward writes, “Berns said, ‘I changed my mind.’” Hayward then offers his “theory” that “the judicial predations of the Warren Court era” prompted Berns to change course. Call it a “prudential judgment,” call it fear of the “Frankenstein’s monster” of the “living Constitution”—call it anything, apparently, but a considered conclusion about the meaning of the Constitution by a scholar who improved his understanding over a lifetime of study.

IN FACT, BERNs DID MORE THAN SIMPLY say, “I changed my mind.” In an essay titled “Preserving a Living Constitution,” first published in 1993 and reprinted in his last volume of collected essays, *Democracy and the Constitution* (2006), Berns discussed his 1953 article on *Buck v. Bell* and suggested that he had succumbed then to “the temptation to go beyond the text of the Constitution.” This, he said, “appears to be irresistible. It may even be inevitable.” But, he argued, “the idea that judges are entitled to rest their decisions on the principles of ‘natural justice’—or any of its modern synonyms—is incompatible with the Framers’ idea of a written constitution.” Whether we accept this view or reject it, Berns had more than fears and calculations about a runaway judiciary. He had arguments—formidable ones.

Patriotism Is Not Enough is sprinkled with other passing comments about Berns that will puzzle anyone familiar with his work. Hayward tells us that “Berns had criticisms of the Declaration,” but I am unaware of any, and Hayward doesn’t say what they might have been. Later we are told that Willmoore Kendall’s “skepticism of natural rights partially aligned him again with Berns,” yet, whatever might be said of Kendall, there is no evidence that Berns was ever skeptical of the American political order’s being grounded in the



doctrine of natural rights—as opposed to being skeptical of the place some would give such rights in the exercise of judicial review. (The distinction makes a large difference.) In the passage quoted above about his response to the Warren Court, Hayward writes that “Berns tilted toward Lockean legislative supremacy.” This suggests that Berns inclined toward rejecting judicial review *tout court*, which is plainly wrong.

Perhaps the difficulty is that for Hayward, as for Jaffa, “a strict textual originalism is indistinguishable from positivism.” But this is not necessarily true, and one example offered from one bad lecture by the late Chief Justice William Rehnquist does not make it so. Hayward seems to recognize this himself a little later when he writes, “Neither [Antonin] Scalia nor Robert Bork [denies or opposes] the ideas of natural law or natural rights...; they just think that it is a bad idea for the judiciary to protect unenumerated rights or for judges to employ natural law as a jural tool.” More than just a “bad idea,” for these jurists, and similarly for Berns, reaching for substantively just outcomes that cannot be plausibly grounded in the text of the Constitution is anti-constitutional, an abuse of judicial power, not despite but *because* of a devotion to the principles of the Declaration that undergird the Constitution.

THIS BRINGS US TO THE CRUX OF THE argument between Jaffa and Berns regarding the Constitution, the Declaration, and the way the American Founding relates to the longer history of political philosophy. In fairness, it must be said that both men were capable of rushed or conclusory arguments. Berns was prone to move too quickly from equating the founders’ political thought with John Locke’s and Locke’s with Thomas Hobbes’s, and to erect an impenetrable “ancients vs. moderns” boundary between classical and Christian natural law, on the one hand, and modern natural rights, on the other. Then he would throw in a by-the-way qualification that the founding was more complex than that, noting as he did in an article for *Commentary* that “the American government was created by men whose characters had been formed under the laws of an older and civilized politics.” Jaffa, for his

part, came in his later years to claim, rather dubiously, that the principles of the founding were, as he wrote in the Winter 2001 CRB, “dominated by an Aristotelian Locke—or a Lockean Aristotle.” Oddly, each in his own way might have made too much of Locke and too little of the role of Christianity in the founding—or perhaps too little of Locke’s Christianity.

But on a particular point of dispute between them—whether the Declaration of Independence insists on popular government or is open to other forms as legitimately consistent with its principles—Jaffa was responsible for a wildly intemperate war on his old friends Berns and (particularly) Diamond, making unwarranted charges of “Calhounian” sympathies and in general blowing the issue out of all proportion to its importance in American politics. Hayward touches on this origin to the “fight club,” but leaves some of the story untold.

JAFFA BEGAN THE FIGHT IN PRINT WITH A lengthy assault on Diamond that he published in his 1978 book, *How to Think About the American Revolution*, just a year after Diamond’s untimely death (though it had circulated among acquaintances as an unpublished paper before then). This inexplicable attack left Diamond’s friends exasperated and, given Jaffa’s rhetorical overkill, they took it personally.

Diamond had said in a widely read 1973 bicentennial lecture, “The Revolution of Sober Expectations,” that the Declaration provided “no guidance” with respect to “forms of government,” on which it was “neutral,” although any establishment of a government must be by democratic choice. Jaffa unaccountably inflated this by a string of non sequiturs into an argument Diamond had not made, that the Declaration “offered no guidance to the Framers of the Constitution”—about *anything*, apparently. From there, he unfairly linked Diamond with John C. Calhoun’s attack on the Declaration root and branch.

What made the attack all the more galling was that, in 1972—just a year before Diamond’s lecture—Jaffa himself had made an indistinguishable argument about the Declaration’s openness on forms of government in a lecture of his own, “What Is Equality?

The Declaration of Independence Revisited,” which later appeared in Jaffa’s collection *The Conditions of Freedom* (1975). When he attacked Diamond for making this argument, he said nothing of having made it earlier himself, let alone of why he now took a different view.

In 1982, in the pages of *National Review*, Walter Berns said he still agreed with Jaffa’s 1972 lecture; this was the last published reply he ever made to Jaffa as their deep freeze set in. Hayward suggests that Jaffa rethought and “substantially modif[ied]” his view on the “no guidance” thesis. But in 1984, in his book *American Conservatism & the American Founding*, Jaffa claimed unpersuasively that Berns had “ignored the context” of what he’d written in 1972, and said, “I do not believe I contradicted what I had written earlier.” Of course he had—as Hayward tacitly concedes.

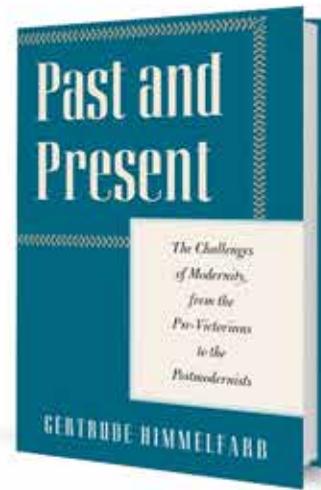
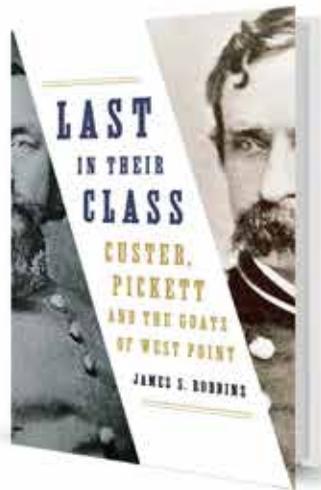
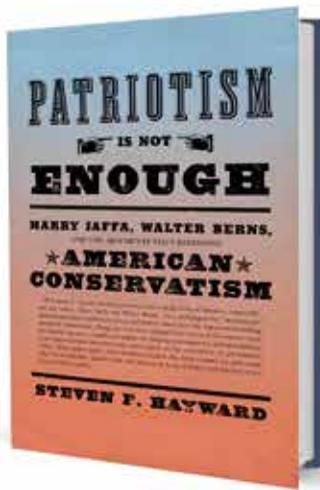
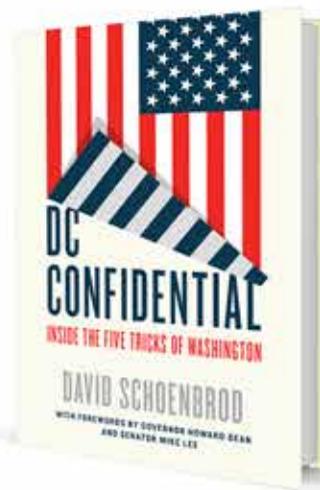
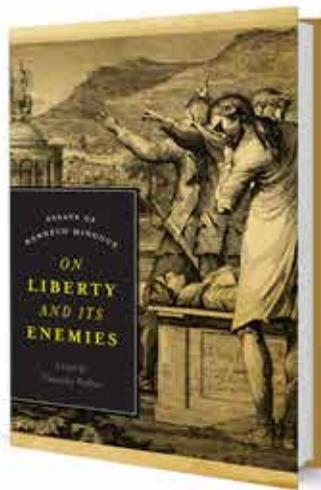
THE FACT IS: THE AMERICAN FOUNDERS saw no form of government *but* a republic as suitable for their independent new country. The question of whether the Declaration is open to other forms of government bears *not at all* on equality, liberty, natural and civil rights, constitutional interpretation, the rule of law, or any of the other matters with which Jaffa, Berns, and their contemporaries grappled.

With *Patriotism Is Not Enough*, Steven Hayward has rendered in a lively way a tremendous service—especially at the present moment—by laying out some of the most essential questions concerning what it is to be an American and a conservative. One can only hope readers will turn next to his subjects’ best books—in Jaffa’s case, *Crisis of the House Divided* and *A New Birth of Freedom*; in Berns’s, *The First Amendment and the Future of American Democracy* (1976), *Taking the Constitution Seriously* (1987; overlooked by Hayward), and *Making Patriots* (2001). These great contributions to America’s understanding of itself will endure, long after memories of old quarrels fade away.

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