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# CLAREMONT

REVIEW OF BOOKS

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## SPECIAL ANNIVERSARY DOUBLE ISSUE

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Essay by Vincent Phillip Muñoz

## ANCIENT AND MODERN

*How Straussians interpret the founding.*



PERHAPS NO GROUP OF SCHOLARS has investigated the principles of the American Founding more seriously than the students of Leo Strauss. The bicentennial celebrations of the Declaration of Independence and the Constitution produced notable Straussian commentaries, including the still-influential essay by Martin Diamond, “Ethics and Politics: The American Way.” Although those who studied directly under Strauss have, for the most part, retired or passed, we can expect the students of those students to take the lead as we celebrate the 250th anniversary of the Declaration and, in a few years, of the Constitution and the Bill of Rights.

Yet Straussians, famously, disagree about the meaning of America. Following Diamond, so-called “East Coast” Straussians contend the founding was “low but solid,” grounded pri-

marily and essentially in preserving life, liberty, and property and nothing more, thus eschewing or at best downplaying the cultivation of virtue and morality. So-called “West Coast” Straussians interpret America more favorably, even claiming that it is the “best regime” of Western civilization, as Harry V. Jaffa argued in these pages. West Coasters maintain that America, properly understood, aims at goodness and nobility. Why so much disagreement? More importantly, who gets America right?

The intellectual stakes are considerable. Ought we to celebrate the 250th anniversary of the Declaration and its principle of equality, or should we de-emphasize it and substitute an alternative understanding of America? Should we embrace natural rights or minimize what Harvard’s Mary Ann Glendon called “rights talk”? Do we return to the founding or imagine a “post-liberal” future?

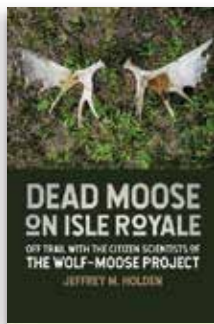
Though he didn’t call attention to it, Jaffa is actually the intellectual father of both East Coast and West Coast Straussianism. In his chapter on “The Universal Meaning of the Declaration of Independence” in *Crisis of the House Divided* (1959), Jaffa outlines the basic premises of the East Coast’s “low but solid” interpretation. Thomas Jefferson, Jaffa argues, wrote the Declaration within the “Lockean horizon” of the state of nature, and within the state of nature, there are “no real duties” but only “rules which tell us to avoid doing those things which might impel others to injure us.” Jaffa continues:

[I]f we conceive these rights [of life and liberty] as operative within the Lockean state of nature, we will immediately see that no man is under any necessary obligation to respect any other man’s rights.



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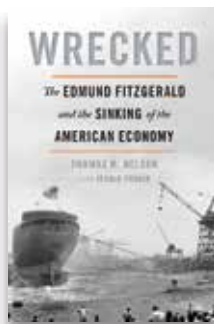


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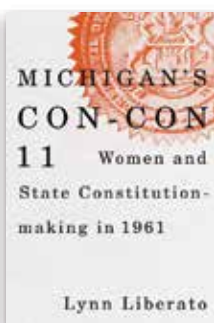


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For example: because I have a right to life, I have a right to kill any man whom I have reason to believe might kill me.... The same holds true of liberty: I have a right to liberty, which right *permits* me to enslave anyone who, I fear, might otherwise enslave me." [Jaffa's emphasis]

"In short," Jaffa concludes, "there is little beyond an appeal to enlightened self-interest in the doctrine of universal equality when conceived in its pristine, Lockean form."

Jaffa learned from Strauss that the Lockean state of nature was essentially Hobbesian. In *Natural Right and History*, Strauss explains how Thomas Hobbes and Locke's modern doctrine of natural right departs from classic natural right. To oversimplify, the ancients hold that goodness for the individual meant having a well-ordered soul, one in which reason governed the passions. A well-ordered polity, similarly, aims at virtue and is governed by the wise or the "best." Modern natural right lowers the aims both for the individual and the state. The moderns hold reason to be in service to the passions. A well-ordered state channels individual self-interest through institutions that separate, check, and balance power so as to provide security and comfortable self-preservation. The early Jaffa interpreted the Declaration through Strauss's "Ancients vs. Moderns" framework and placed America on the side of the moderns, given the founders' obvious intellectual debts to Locke. America might be our regime, and it might even produce an Abraham Lincoln (who, in *Crisis of the House Divided*, Jaffa said creatively interpreted and departed from the founders), but America's founding principles are rooted in self-interest, and, hence, neither noble nor truly admirable.

The "post-liberal" critique of America, which a few years ago captivated so many young intellectual conservatives and still resonates among some, takes its bearing from East Coast Straussianism. In his blockbuster *Why Liberalism Failed* (2018), Patrick Deneen, who studied with the notable East Coasters Allan Bloom and W. Carey McWilliams, assumes the accuracy of Jaffa's initial depiction of America. Deneen's novelty lies in to where and when he would like to return. Whereas Strauss's efforts were directed toward resurrecting a serious intellectual encounter with classical natural right and reviving political philosophy from what he called the "cave beneath the cave" in which the moderns have placed themselves, Deneen and the post-liberals wish to move our politics in a more medieval direction. Deneen in *Regime Change* (2023) and Harvard Law School's Adrian Vermeule in *Common Good*

*Constitutionalism* (2022) sketch a vision of a less restrained, more comprehensive, and more religious polity, one in which the state shapes souls more than it secures rights.

The post-liberals' star has faded a bit with Donald Trump's re-election, DEI's fall from grace, and the Supreme Court's decisions in *Dobbs v. Jackson Women's Health Organization* (2022) (which overturned 1973's *Roe v. Wade*) and *Students for Fair Admissions v. Harvard* (2023) (which outlawed most forms of race-based affirmative action). The political rejection of the most aggressive elements of cultural progressivism has, at least for the time being, suggested to young conservatives that America is not as fundamentally corrupt as the post-liberals contend. But one election and a handful of Supreme Court appointments do not mean America is philosophically well founded.

### Created Equal

READERS OF THE CLAREMONT REVIEW of Books know that Jaffa revised his understanding of America. Around the time of the Constitution's bicentennial, Jaffa no longer held that America was simply a modern regime. Even more confusingly for Straussians, Jaffa began to teach that "the Founding, which Lincoln inherited, was dominated by an Aristotelian Locke—or a Lockean Aristotle," as he later wrote in the Winter 2001 *CRB*.

What appeared to be a break from Strauss—joining together that which Strauss put asunder—arguably was Jaffa's most Straussian move. In *Crisis of the House Divided*, Jaffa violated an elementary Straussian rule by attempting to interpret an author better than the author understands himself. He imposed Strauss's "Ancients vs. Moderns" framework onto the founders. As some Straussians continue to do today, Jaffa presumed that to understand the founders, one only needed to understand Locke; and to understand Locke, one only needed to have read chapter 5 of Strauss's *Natural Right and History* (1953). There one learns that Locke followed Hobbes; ergo, the founders were Hobbesian and thus adopted the essential character of the moderns.

When Jaffa more closely examined the founders' writing and thinking on their own terms—trying to understand them as they understood themselves—he found that they explicitly rejected Hobbes and grounded natural rights on natural duties. The founders did not hold, as he had written in *Crisis of the House Divided*, that in the state of nature "no man is under any necessary obligation to respect any other man's rights." In fact, they say



the opposite. Alexander Hamilton, writing in a 1775 pamphlet titled “The Farmer Refuted,” to take just one example, affirms the existence of a moral “law of nature,” which is “obligatory upon all mankind, prior to any human institution whatever.” Upon the law of nature, Hamilton continues, “depend[s] the natural rights of mankind.” In the founders’ self-understanding, natural rights are part of the law of nature, which itself is a morally obligatory standard of just and unjust, authored by the Creator and known to man through reflection upon human nature. Natural rights do not break radically or irreparably from classical natural right. Natural rights start with the idea that a standard of moral right and wrong exists in nature, that mankind is capable of grasping it, and that justice requires living within its strictures.

That the founders believed the principles of the Declaration of Independence were consistent with the classic natural right and natural law traditions, of course, does not make it so. Aristotle affirms explicitly neither human equality nor the idea that legitimate government is instituted via consent. Classical political philosophy does not begin with the state of nature; it teaches that the end of politics is the cultivation of moral virtue, not the protection of life, liberty, and property.

Jaffa wrote extensively on these matters, explaining why he believed that the founders’ Lockean social compact theory was a prudential application of Aristotelian political science in the post-Reformation world, and we should let his own writings speak for him (see, notably, the essays in his 2012 collection, *Crisis of the Strauss Divided*). But we might begin to address these difficulties from the simple observation that, if Aristotle rejects human equality, Aristotle might have been wrong. (On this point one should read Jaffa’s treatment of natural slavery in “What Is Politics?: An Interpretation of Aristotle’s *Politics*,” contained in his 1975 collection, *The Conditions of Freedom*.) The ancients may teach that some are so superior in wisdom and virtue that they have a moral right to govern their inferiors, but that alone does not make the teaching true or a necessary conclusion of natural right.

The difficulty of identifying who truly is wise and virtuous—not to mention the seemingly unsolvable problem of getting the unwise to support the claims of the genuinely wise while repudiating charlatans—complicates the ancients’ teaching. They themselves clearly understood this, which is why explicit or implicit appeals to divine right often accompany their supposed natural right teaching. The American Founders, no less than the ancients, appealed

to nature and the natural right of wisdom as standards. But rather than leaving the matter as an unsolved dilemma they approached the problem by emphasizing another dictate of reason: the equal liberty of every individual to exercise dominion over his or her own life.

Pennsylvania’s James Wilson, a signer of both the Declaration and the Constitution before being appointed to the Supreme Court by President Washington, most thoroughly articulates the founders’ common understanding in his *Lectures on Law*. “Nature has implanted in man the desire of his own happiness,” Wilson writes,

she has inspired him with many tender affections towards others...; she has endowed him with intellectual and with active powers; she has furnished him with a natural impulse to exercise his powers for his own happiness, and the happiness of those, for whom he entertains such tender affections.

“If all this be true,” Wilson continues, “the undeniable consequence is, that he has a right to

### Human nature is such that men and women are created to be free.

exert those powers for the accomplishment of those purposes, in such a manner, and upon such objects, as his inclination and judgment shall direct.” This right, he says, “is natural liberty.”

The right of natural liberty, Wilson makes clear, “is suggested to us not only by the selfish parts of our constitution, but by our generous affections; and especially by our moral sense, which intimates to us, that in our voluntary actions consist our dignity and perfection.” Human nature is such that men and women are created to be free. We can know right from wrong, perhaps even desire to do wrong, but still choose to do right. Within the freedom to be moral lies “our dignity and perfection.”

Wilson and the founders held that human nature is oriented toward freedom, freedom understood as choosing to conform one’s actions within the bounds of the natural moral law. “The laws of nature are the measure and the rule; they ascertain the limits and the extent of natural liberty,” Wilson writes. Unlike Hobbes and the esoteric Locke, the found-

ers conceived mankind as a teleological being. Men are created free so they can direct their lives according to the moral laws of Nature and Nature’s God.

As this freedom emanates from nature, it belongs to every human being. All men and women, by nature, are born equally free. All have a natural right of liberty to direct one’s own life according to one’s own inclinations, subject to the moral law of nature. This is what “all men are created equal” means.

### Nature and Nature’s God

OUR NATURAL EQUALITY IN FREEDOM does not mean all will use their freedom equally well. “Those who judge wisely,” Wilson continues, “will use this [natural] liberty virtuously and honourably: those, who are less wise, will employ it in meaner pursuits: others, again, may, perhaps, indulge it in what may be justly censured as vicious and dishonourable.” Equality in natural liberty does not mean equality in wisdom or virtue. On this point the founders agree with the ancients. They also agree with the ancients that man is a rational animal, that men ought to live according to their nature, and that the higher rational parts of the soul ought to govern the lower more passionate and appetitive elements. They disagree about what nature actually reveals about mankind. Alexis de Tocqueville, bracingly, put it this way in *Democracy in America*:

The most profound and vast geniuses of Rome and Greece were never able to arrive at the idea, so general but at the same time so simple, of the similarity of men and of the equal right to freedom that each bears from birth; and they did their utmost to prove that slavery was natural and that it would always exist....

All the great writers of antiquity were part of the aristocracy of masters, or at least they saw that aristocracy established without dispute before their eyes; their minds, after expanding in several directions, were therefore found limited in that one, and it was necessary that Jesus Christ come to earth to make it understood that all members of the human species are naturally alike and equal.

Men by nature may be equal, but they are not by nature good. “If men were angels, no government would be necessary,” Publius writes in *The Federalist*. Our lack of wisdom and virtue makes government necessary. We



sometimes misjudge the law of nature and sometimes disregard it. One can ascribe this to original sin or simply to human nature, but whatever the case, men who ought to respect the moral laws of nature and the natural rights of others often do not do so. The system of private judgment and retribution that results, for reasons that are easy to grasp, does not lead to human flourishing. Virtue may be its own reward, but it needs to be fortified by the rule of law that effectively exacts justice in this life.

Some Straussians take this to mean that our Creator ignores us or fails to provide for us. But that would only be true if He left us without the means to care for ourselves. As every parent understands, you don't do everything for your children even if you love them. Locke and the founders devised the philosophical and constitutional structures to move men from the state of nature to political society without abandoning either the rights or duties of Nature and Nature's God. In this way, the founders' social compact theory of government can be understood to be man's rational participation in the eternal law.

As I observed in "The American Revolutions of 1776" in the Summer 2025 issue of *National Affairs*, the founders' political project includes "three revolutions" that pertain to the founding, purposes, and limits of government.

The institution of government requires the consent of the governed because all men are created equal. No individual has the right to rule politically without first obtaining the consent of the governed. Consent, it must be emphasized, is a necessary but not sufficient condition of legitimate government.

Good government, additionally, must secure the natural rights of the governed, which may not exhaust the common good, but comprise an essential part of it. Martin Luther King, Jr. powerfully expressed this sentiment in his 1963 Letter from Birmingham Jail. "A just law," he wrote,

is a man-made code that squares with the moral law, or the law of God. An unjust law is a code that is out of harmony with the moral law. To put it in the terms of St. Thomas Aquinas, an unjust law is a human law that is not rooted in eternal and natural law.

Natural rights are a part of the natural law. A just government secures them.

Importantly, we also place fundamental limits on governmental authority. Some

natural rights are of the character that they only can be protected by remaining beyond the state's reach. First of these is the right to worship according to conscience. Government may not coerce us to pray or punish us for failing to pray because we have never granted it the authority to do so. We do not grant government such authority because we have the duty to worship according to conviction and conscience. We limit the state in light of our more fundamental duties to our Creator.

The separation of church and state is thus not, as it is too often portrayed, primarily a check or restraint on the Catholic Church or institutional religious authority. We separate state from church to respect individuals' religious duties, which are "precedent, both in order of time and degree of obligation" to the claims of political society, as James Madison states in his 1785 Memorial and Remonstrance Against Religious Assessments. Limiting the state's authority also recognizes and respects church authority, which does not come from God nor require direct control of the state's lawmaking authority.

#### Safety and Happiness

THE FUNDAMENTAL HUMAN SITUATION is that we are moral beings who ought to live according to the natural moral law. The freedom that makes this possible also makes inevitable human wickedness. To live as we are designed to live requires the creation of a just political order. But what justice requires and how it can be made actual are full of difficulties. Classical political thought meditates on those difficulties without fully providing how they can be resolved. The traditional answer, set forth so clearly by Fustel de Coulanges in his 1864 classic, *The Ancient City: A Study on the Religion, Laws and Institutions of Greece and Rome*, is that the city's gods provide the law. But once the gods were no longer believed in or believable, the ancient city faced a crisis of legitimacy, a crisis that accounts, in part, for classical political philosophy itself.

Machiavelli, Hobbes, and Strauss's Locke provide one modern response to this situation, a response that presumes that we are either fatherless or have been abandoned. George Washington provides another. The founders' alternative holds that the Creator placed us in the state of nature and, thus, that He created us equal and endowed each of us with certain rights. Washington, John Adams, Jefferson,

Madison, Hamilton, and, in time, Lincoln also reveal that He provided us with what we need to devise a system of law and order that allows us to live according to justice and to secure the conditions for prosperity, the arts, education, virtue, and piety.

Harry Jaffa grasped the relatively simple insight that to lower the ends of politics does not necessarily imply a lowered understanding of the ends of man. It is true that Aristotle said the polis is the comprehensive association and that, in the *Politics*, he denigrates commercial republics like America. But Aristotle wrote before Christianity. Whatever his doubts about the Greek gods, Aristotle did not address a monotheistic religion that holds every person is a child of the same God, that all are called by name to love that God with their whole heart and soul, and that this God communicates that his kingdom is not of this world. Jaffa's insight, which led him to break from his earlier Straussianism, was to see that whatever the profundity of classical political thought, it did not and could not directly address this new political situation. He understood that Christianity eviscerated the ancient polis, and thus that one should not expect the political wisdom of the ancients to produce the same political teachings in modernity.

The genius of the American Founders was to adapt Locke's natural rights teachings, and to improve his (and the Baron de Montesquieu's) constitutionalism to fit the geography and people of America. They limited the end of politics, but not the ends of man. Limits on the former made possible the good of civic friendship among Christians of different denominations, among Jews and those of other religions, and even those of no religion. That civic harmony, in turn, makes possible the material, cultural, spiritual conditions in which human beings can think and pray in peace and freedom. That the founders secured these ends, ends which are admired in different ways by the greatest minds both ancient and modern, may make America, as Jaffa said, the best regime. A regime that remains worthy of our devotion in its 250th year.

Vincent Phillip Muñoz is the Tocqueville Professor in the Department of Political Science and Concurrent Professor of Law at the University of Notre Dame, and the author, most recently, of *Religious Liberty and the American Founding: Natural Rights and the Original Meanings of the First Amendment Religion Clauses* (University of Chicago Press).

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