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Review Essay

Natural Right in the American Founding

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Harry V. Jaffa, *Original Intent and the Framers of the Constitution: A Disputed Question* (Washington, D.C.: Regnery Gateway, 1994), xv + 408 pp. $24.00.

> *Theos ē tis anthrōpōn humin, ō zenoi, eilēphe tēn aitian tēs tōn nomōn diatheseōs?*
> (God or some man is it, o strangers, who is the cause of the disposition of your laws?)

A recent writer laments that the school of Leo Strauss has fallen into factious dispute regarding the character of the American regime.

> Some see the American political order as altogether modern and therefore defective. Some see it as not so bad because not so modern. Mostly, these implicitly reject the Straussian insistence on the partition between ancients and moderns. At first they claimed to be a kind of subset of Straussians, but now they openly speak of "Straussians" with the same bitterness and derision which characterized the earlier reactions of Marxists and behavioralists. A third group insists that the American scheme is wholly modern, but still good.

And, without the slightest trace of irony, a recent writer notes that "I have tended in this third direction" (*Crisis* [June 1993], p. 5).

No one epitomizes the central position more than Harry Jaffa, who, more than any other student of Strauss, has devoted almost his entire career to uncovering and articulating the natural right foundations of the American regime. His frequent reliance on classical political philosophy in the explication of those foundations is particularly offensive to a recent writer because it rejects Strauss's "insistence on the partition between ancients and moderns." Jaffa answered a recent writer in the following terms:

> What Strauss taught about the modern break with the principles of antiquity—whether of reason or revelation—refers to the history of political philosophy. It does not refer to the history of politics, or of the incorporation, or non-incorporation, of principles, whether ancient or modern, in political regimes. Strauss was not an historical determinist. If his own belief in the superiority of pre-

> modern principles was possible, why was it not possible in others, especially statesmen and legislators?[1]

Strauss, of course, wrote only obliquely about the American regime, and in widely scattered places. The backdrop of his work was "the crisis of the West" rather than "the crisis of America." Yet it would be difficult to believe that Strauss did not somehow see the crisis of the West and the crisis of America as stemming from the same causes, namely, the abandonment of natural right. The question that confronts us is whether decent constitutionalism can be buttressed by teachings derived from classic natural right. Although Strauss's works present daunting problems for the interpreter—not the least of which is the fact that he left many false trails and unmarked traps in his writings (amply attested to by the recent works of Shadia Drury and Stephen Holmes, to mention only two)—there can be little doubt that for him the study of classic natural right was not merely a matter of antiquarianism. Jaffa quite reasonably expresses the conviction that "Strauss' entire work pointed toward rescuing the *political practice* of the modern world from the consequences of the *political theory* of modern philosophy," and that this project would necessarily rely on "'powerful support from . . . the premodern thought of our western tradition."[2]

On the issue of ancients and moderns, Strauss wrote in 1952 that

> a modern phenomenon is not characterized by the fact that it is located, say, between 1600 and 1952, because premodern traditions of course survived and survive. And more than that, throughout the modern period, there has been a constant movement against this modern trend, from the very beginning.[3]

To say nothing of other considerations, there are significant points of agreement between ancients and moderns, most notably the modern premise "which would have been acceptable to the classics, that the moral principles have a greater evidence than the teachings even of natural theology and, therefore, that natural law or natural right should be kept independent of theology and its controversies."[4] The modern doctrine of the state of nature must be understood precisely in the light of this agreement.

Strauss, of course, emphasized the differences between classic natural right and modern natural right. Classic natural right is teleological; man's perfection must be understood in terms of his natural ends. Modern natural right rejects teleology in favor of beginnings. Men have rights; freedom rather than virtue is the proper goal of man. Classic natural right does not require consent of the governed to legitimate rule. Modern natural right is egalitarian; consent of the governed is necessitated by natural human equality. Classic natural right emphasizes prudence as a guide to political action. Scientific certitude replaces prudence in modern natural right. In short, modern natural right lowers the goals of political life in order to guarantee its actualization. Most importantly, however, modernity attempted to overcome the distinction between reason and

revelation. It was within the context of the larger and more important distinction between reason and revelation that Strauss understood the quarrel between ancients and moderns. The revival of the quarrel was necessary to the preservation of both reason and revelation. In any case, the success of modern natural right means that classic natural right—if it is to be a force in modernity—must be presented by statesmen in the form or guise of modern natural right.

With the advent of Christianity, the question of political authority took on an entirely new dimension—one that could not have been anticipated by classical political philosophers. In classical political philosophy, the laws of particular polities are always supported by the gods of those polities. As Jaffa remarks, "divine sanction" is necessary for citizens even though "the intrinsic ground" of the authority of the laws "is its reasonableness. There must then be either immediate divine sanction for the laws, or a natural sanction translated from that form visible only to philosophers, to one that is intelligible to nonphilosophers." But the universalism of Christianity makes the appeal to particular gods as the ground or foundation of the laws of particular polities impossible. In this case, there must be "some way of translating the authority of a universal nature into the ground of particular laws. This . . . is exactly what the doctrine of the state of nature . . . accomplished. Moreover, it did so by defining nature itself in the light of the differences between man, beast and God. That is to say, it did so by a natural theology consistent with monotheistic revealed theology."[5] (One might add that this is precisely the way in which many—perhaps most—of the preachers of the colonial and constitutional periods understood the relation between natural and revealed theology.[6]) Jaffa concludes that the "necessary emendation" of Aristotle in particular was

> required not by any transformation in Aristotle's principles, but by the transformation of the human condition—of political life—in which those principles are applied. The idea of the state of nature modifies and yet preserves the idea of man as by nature a political animal. Moreover the idea of the state of nature, by treating civil society as a voluntary association, lays a firmer foundation for the idea of the rule of law than in Aristotle's *Politics*. ("Equality, Wisdom, Morality and Consent," p. 27)

Thus the direct appeal to nature—unmediated by theological authority—provides the ground for the separation of church and state as well as the common ground of statesmanship, ancient and modern.

For Strauss, natural right in its classical understanding is always potentially demonstrable in the human condition. It is the ground of the most fundamental human experiences, those simple experiences of right and wrong, good and evil, and just and unjust.[7] If man is by nature political, then natural right is more or less a part of every regime. Or, to put it in slightly different terms, natural right is a part of political right, it has everywhere the same *dynamis* even though it is everywhere changeable. As Strauss remarked, "[t]he evidence

adduced by conventionalism is perfectly compatible with the possibility that natural right exists and, as it were, solicits the indefinite variety of notions of justice or the indefinite variety of laws, or is at the bottom of all laws" (*Natural Right and History*, p. 101). And if it is true that natural right is a part of political right, the political philosopher will come to sight first as a kind of umpire: "he tries to settle those political controversies that are both of paramount and of permanent importance."[8] It is true that Machiavelli "tried to effect, and he did effect, a break with the whole tradition of political philosophy" (*What Is Political Philosophy?*, p. 40), but Strauss's entire career seems to be a kind of proof that he did not believe that Machiavelli had succeeded in destroying the possibility of natural right.

In the role of "umpire," the political philosopher is indistinguishable from "a good citizen who can perform this function of the good citizen in the best way and on the highest level." Even though the political philosopher finds it necessary to look beyond the purview of the citizen, "he does not abandon his fundamental orientation, which is the orientation inherent in political life" (*What Is Political Philosophy?*, p. 40). It almost goes without saying that the political philosopher as umpire is necessarily a "natural right teacher."[9] The task of such a teacher in the first instance would then be to uncover and build upon the natural right elements of his regime—indeed perhaps even magnify and adorn those elements—for politically salutary results. Here the political philosopher must always be mindful of the "theological-political problem," the necessity of presenting his natural right teachings in a manner consistent with the authoritative moral and religious views of his political community. But, if the political philosopher is both "umpire" and "natural right teacher," he is also necessarily a teacher of legislators, since "it is by being the teacher of legislators that the political philosopher is the umpire par excellence." According to Strauss, "Plato demonstrated this *ad oculos* in his dialogue on legislation, by presenting in the guise of a stranger the philosopher who is a teacher of legislators" (*What Is Political Philosophy?*, p. 84). And the Athenian Stranger is the natural right teacher par excellence (*Laws* 631d).

Awareness of the "theological-political problem" will, of course, entail the appropriate use of rhetoric, a rhetoric that will be animated by a kind of "Socratic *kalam*."[10] In our time, this Socratic *kalam* will derive its rhetorical force from the twin roots that have animated the West, reason and revelation, both of which came under attack by modern philosophy. Today, the prospect of success is made exceedingly difficult not only by the self-destruction of reason in modern philosophy but also by the fact that "there is no traditional piety which can form the moral substratum for any such *kalam*" ("The Legacy of Leo Strauss," p. 20). But, of course a difficulty is not an impossibility—the responsibility of the natural right teacher remains unaffected by the prospects for success.

Strauss, of course, often wrote of the fundamental incompatibility of the accounts of the human good given by reason and revelation (*Natural Right and History*, pp. 74–75; "Progress or Return? p. 260). He nevertheless reiterated "that this unresolved conflict is the secret of the vitality of Western civilization" ("Progress or Return?" p. 270). It is, of course, the duty of the defenders of Western civilization, i.e., the defenders of both reason and revelation, to maintain the existence of this dialectic. The victory of one or the other would be the death of both and, undoubtedly, the death of the West.

Despite the opposition between reason and revelation, Strauss argued that there is a crucial point of agreement between these conflicting views of the human good: "the Bible and Greek philosophy agree in regard to what we may call, and we do call in fact, morality. They agree, if I may say so, regarding the importance of morality, regarding the content of morality, and regarding its ultimate insufficiency" ("Progress or Return?" p. 246). What divides the Bible and Greek philosophy concerns the "ultimate insufficiency" of morality or "the basis of morality," i.e., what "supplements or completes morality" (ibid.). Jaffa surely captures the spirit of Strauss's understanding of Greek philosophy when he remarks that "as the founder of political philosophy, Socrates was also the founder of a new way of looking at the whole, that is to say, he became a refounder of philosophy." The consequence of this "refounding" is that the ground of philosophy itself becomes manifest—access to the being of things is through moral distinctions. "In Strauss," Jaffa writes, "the moral distinctions become the heart of philosophy. And statesmanship thus itself becomes part of philosophic activity" (*OI*, pp. 369–70).

It is true that we cannot turn to classical political philosophy for recipes for the resolution of the crisis of our time. "For the relative success of modern political philosophy," Strauss wrote

> has brought into being a kind of society wholly unknown to the classics, a kind of society to which the classical principles as stated and elaborated by the classics are not immediately applicable. Only we living today can possibly find a solution to the problems of today. But an adequate understanding of the principles as elaborated by the classics may be the indispensable starting point for an adequate analysis, to be achieved by us, of present-day society in its peculiar character, and for the wise application, to be achieved by us, of these principles to our tasks.[11]

It hardly needs to be pointed out that the natural right of the American Founding is not classic natural right. With the success of Christianity, the only natural right that was available to the Founders was egalitarian natural right. But some of the Founders at least seemed to know—or divine—that natural law was the modern world's access to natural right and that natural law was therefore a kind of exoteric version of natural right. In egalitarian natural right, consent necessarily takes precedence. It is the task of constitutional government—and the

rule of law—to insure that consent is not merely the expression of the people's will but of their rationality.

Strauss remarked in an oft-quoted passage "that liberal or constitutional democracy comes closer to what the classics demanded than any alternative that is viable in our age" (*What Is Political Philosophy?*, p. 113). Consequently, "wisdom requires unhesitating loyalty to a decent constitution and even to the cause of constitutionalism." Wisdom requires "unhesitating loyalty" to constitutional regimes because of their moderation, and "moderation will protect us against the twin dangers of visionary expectations from politics and unmanly contempt for politics"[12] The loyalty will be to a moderate regime, but what of the character of the loyalty? Moderation is not a virtue of philosophy, although it is a "virtue controlling the philosopher's speech." The character of the rhetoric that provides the "unhesitating loyalty" will depend upon prudential considerations, i.e., the extent of the dangers threatening constitutionalism. The philosopher sees farther than the citizen, and what may appear to the citizen—and the intellectual—as immoderate speech may in fact be the soul of moderation. If it is true that "[t]he United States of America may be said to be the only country in the world which was founded in explicit opposition to Machiavellian principles,"[13] then the fate of America may well determine the fate of both reason and revelation. Jaffa's unhesitating defense of the American regime is animated by his thoroughgoing conviction—as I believe it was also Strauss's conviction—that "the crisis of American constitutionalism" is "the crisis of the West" (*OI*, p. 42). And in defense of America and the West from "the superstitions of that relativism, positivism, and nihilism that are the reigning modes of thought in this new dark age" (*OI*, pp. 244, 252–53), moderation must surely be a vice.

In the mid-1980s, a remarkable debate surfaced in academic and legal circles concerning the principles of constitutional interpretation. At issue was the weight that should be given to the intentions of the Framers in interpreting the Constitution. As originally conceived by the Reagan administration's Justice Department, the argument in favor of "a jurisprudence of original intent" was specifically designed to restrain judicial activism. The defenders of judicial activism—most notably Justice Brennan, Justice Marshall, and the law-school professoriat—relied on arguments that envisioned the role of the Supreme Court as a kind of "continuing constitutional convention," specifically charged with reinterpreting the Constitution to meet the progressively evolving standards of "human dignity." The opponents of judicial activism—most notably Attorney General Edwin Meese, Chief Justice Rehnquist, and Robert Bork—derived a jurisprudence of original intent from a strict adherence to the text, history, traditions, and logical structure of the Constitution.

The two sides, otherwise so different, agree on one thing: neither sees any need to return to first principles. This is the vacuum that Jaffa fills in his latest book, *Original Intent and the Framers of the Constitution: A Disputed Question*. This book consists of a Foreword, "On Jaffa, Lincoln, Marshall, and

Original Intent," by Lewis E. Lehrman; Jaffa's original essay "What Were the 'Original Intentions' of the Framers of the Constitution of the United States?" to which he has attached three appendices, a critique of Edwin Meese, a dissertation on the professional philosopher Leszek Kolakowski, and a critical appraisal of Chief Justice Rehnquist. There are three critiques of Jaffa's original essay: Bruce Ledewitz, "Judicial Conscience and Natural Rights: A Reply to Professor Jaffa;" Robert L. Stone, "Professor Harry V. Jaffa Divides the House: A Respectful Protest and a Defense Brief"; George Anastaplo, "Seven Questions for Professor Jaffa," with three appendices on various topics. Jaffa has responded to each of his interlocutors in turn and has added another appendix (on Robert Bork), an epilogue, and an afterword. The afterword consists of a prefatory note and four unanswered letters to Edwin Meese upbraiding him for refusing to become an interlocutor. This odd-appearing volume presents a sustained political polemic at the highest level.

Jaffa is not a partisan of either side of the debate, although he certainly supports a jurisprudence of original intent. It appears that Jaffa entered the fray merely as a partisan of first principles. He has reserved his considerable firepower, however, almost exclusively for the conservative proponents of original intent—his critique of Meese, Rehnquist, and Bork is devastating. Why not make political common cause with them against the liberal judicial activists? Are they not the common enemy of sound constitutionalism? Surely this question has been asked by many who contemplate Jaffa's intention.[14]

Jaffa argues that, at bottom, the position of Meese, Rehnquist, and Bork is indistinguishable from that of the liberal activists—they both share a kind of moral relativism rooted in the fact/value distinction. As Jaffa remarks, both sides "differ in the particulars of their 'value judgments,' but not in the subjectivity of what they propose as the ground of constitutional law" (*OI*, pp. 238, 49–50). Yet, because Meese, Rehnquist, and Bork profess at least a formal commitment to original-intent jurisprudence they would seem to be eminently more teachable than the liberal activists. And, besides other considerations no less important, one surely has more obligation to benefit and instruct friends than enemies. The partisans of original intent who have fallen under Jaffa's severe gaze here are opinion leaders (in former times they might have been called "gentlemen") who have been seduced by the false theories of modern philosophy, a danger from which opinion leaders and gentlemen are never immune—indeed, they "are nearly defenseless against false gods and false theories" (*OI*, pp. 313, 314–15, 319). The moral relativism of the right is no less pronounced than that of the left; this is especially evident in the positivism of Rehnquist and Bork. It matters little that Rehnquist makes decisions with which Jaffa mostly agrees. Rehnquist has no principled understanding of the Constitution, and his opinions have more the character of accident than principle. What is vastly more important, in Jaffa's longer-term view, is not the particular decisions, but the articulation of the principles of the Constitution.

The major portion of Jaffa's career has been the explication of the principles of the Declaration of Independence. His point of departure was Strauss's remarks about the Declaration in the opening lines of *Natural Right and History*: "The nation dedicated to this proposition has now become, no doubt partly as a consequence of this dedication, the most powerful and prosperous of the nations of the earth. Does this nation in its maturity still cherish the faith in which it was conceived and raised? Does it still hold those 'truths to be self evident'?" (p. 1). Strauss' answer, of course, was that the faith in the truth of these principles had been eroded by the combined onslaught of historicism and modern science. Strauss here issued an invitation to extend his analysis of natural right to the Declaration, and Jaffa took up the challenge in his extended analysis of Abraham Lincoln's political thought in *Crisis of the House Divided* (1959). Since then, Jaffa's understanding of the Declaration has matured and deepened. He is less inclined now to speak of the Declaration as "wholly a document of the rationalistic tradition" or the necessity of "a synthesis of elements which in Jefferson remained antagonistic." Jaffa sees a greater theoretical unity in the Founding than he did previously. The unity of the Founding is the principal theme of his latest work, a work that stands as the final prelude, as it were, for the sequel to *Crisis of the House Divided, The New Birth of Freedom*, a volume that is now, I am happy to report, more than half completed.

Jaffa has always seen the Declaration of Independence as filling the same function as the Athenian Stranger's prelude to the law code in Plato's *Laws*. It is a statement of regime principles, the ground not only of American constitutionalism but of the moral and political life of Americans. The natural law principles of the Declaration are embodied in the Constitution; thus "we do not look outside the Constitution but rather within it for the natural law basis of constitutional interpretation" (*OI*, p. 60). Meese, Bork, and Rehnquist, on the other hand, understand the Constitution as a purely positivist document, a procedural instrument that is indifferent to results. Thus, in their view, constitutional jurisprudence should be one of "neutral principles." In Bork's version, the intent of the Framers must be gleaned solely from "the text, structure, and history of the Constitution."[15] Any reference to "abstract theories" such as the Declaration of Independence simply opens the door to judicial activism—the substitution of the judge's own values for the values of the Framers. And these "values" have no ground in reason; they are merely the subjective product of "the social class or elite with which [the judge] identifies" (*The Tempting of America*, pp. 16, 31, 35, 43, 130, 145, 241, 242, 331).

Rehnquist makes an even bolder statement when he remarks that constitutional "safeguards for individual liberty . . . assume a general social acceptance neither because of any intrinsic worth nor because of any unique origins in someone's idea of natural justice but instead simply because they have been incorporated in a constitution by the people."[16] For both Bork and Rehnquist,

reason has no role to play in constitutional jurisprudence; reason is merely in the service of the idiosyncratic values of the so-called "reasoning class."[17]

Bork and his epigones have formulated a constitutional jurisprudence based solely on opposition to judicial activism, one that views the Constitution as "mere process without purpose" (*OI*, p. 294). Ignored entirely in Bork's account is the possibility of legislative tyranny, a problem that preoccupied the Framers more than any other constitutional issue. For Bork, legislative tyranny is a legitimate and positive expression of the democratic will of the people. "Our lack of consensus on moral first principles," Bork writes, dictates that questions of morality should be decided by democratic majorities (*The Tempting of America*, pp. 257, 259). Any "consensus" on first principles, of course, would simply be an accident, since value judgments are merely the idiosyncratic expression of class interests. In the absence of any rational basis or ground for morality, the will of the majority serves as the substitute for morality.

"The Madisonian dilemma," according to Bork, is the dilemma of how to reconcile the opposing principles of self-rule—"that in wide areas of life majorities are entitled to rule, if they wish, simply because they are majorities"—and the protection of individual rights (*The Tempting of America*, p. 139). But as Jaffa cogently argues, there is no hint anywhere in Madison that majorities are entitled to rule "simply because they are majorities" (*OI*, pp. 285–86). Indeed, Madison, like Jefferson, argued from the opposite point of view, that a majority may do only those things "that could be rightfully done by the unanimous concurrence of the members." Thus, it is not simply the will of the majority that "rightfully" rules in a democracy, but the rational will of the majority (*OI*, p. 296). In the same vein, Jefferson wrote that "[i]ndependence can be trusted nowhere but with the people in mass. They are inherently independent of all but moral law" (Letter to Spencer Roane, Sept. 6, 1819; *OI*, pp. 249, 287). Thus, it is clear that Madison and Jefferson viewed the people as a moral entity, not simply as a collection of discrete value-positing individuals. The positivism of both Bork and Rehnquist is predicated on a kind of moral relativism that ultimately leads to nihilism. In Jaffa's view, this is the direct consequence of attempting to sever morality and justice from their ground in nature or natural right. Jaffa argues that the "necessary presupposition" of Western civilization is that there is a "nonsubjective morality of man as man." And without this presupposition "[a]ny discussion of 'original intent' . . is ultimately vain" (*OI*, pp. 89–90).

Much of the debate between Jaffa and the "originalists" concerns the issue of "substantive due process" and the *Dred Scott* case. According to Bork, *Dred Scott* "was the first appearance in American constitutional law of 'substantive due process,' and that concept has been used countless times since by judges who want to write their personal beliefs into a document that, most inconveniently, does not contain such beliefs" (*The Tempting of America,* p. 31). The "substance" that Taney "poured" into the Constitution's purely procedural guar-

antee was that "slave ownership was a constitutional right." But, according to Bork, "[s]uch a right is nowhere to be found in the Constitution." Taney found it in the Constitution merely "because he was passionately convinced that it *must* be a constitutional right" (ibid., emphasis original). Yet, as Jaffa has demonstrated in excruciating detail,[18] Bork simply ignores the "text, history and logical structure" of the Constitution. While the Constitution does not use the word "slave" (preferring a variety of circumlocutions), it cannot be doubted that the fugitive slave clause, while not conferring a right to property in persons, certainly recognizes and protects that right. This, and the other clauses in the Constitution referring to slaves, are parts of the Constitution's compromises. Jaffa is quick to note that these compromises are ultimately in the service of emancipation. The compromises with slavery were made out of political expediency; without compromise, there would have been little prospect that any constitution would have emerged from the Constitutional Convention. And without a strong federal government, there would have been little prospect that slavery would ever have been put in the course of "ultimate extinction." But Jaffa rightly argues that it is impossible to distinguish the principles of the Constitution from its compromises without reference to the Declaration (*OI*, pp. 281, 21, 62, 71, 271, 293–94).

From Jaffa's point of view, the Founding was incomplete insofar as it departed from the principle of human equality in providing support for slavery. It was not until the adoption of the reconstruction amendments that the Constitution came into formal harmony with the principles of the Declaration. And, on the understanding that rightful sovereignty can be exercised only in the protection of inherent and unalienable rights, the thirteenth amendment would be an unrepealable expression of the Declaration's principle of the sovereignty of the people (*OI*, pp. 58–59).

The "originalists," on the other hand, maintain that the Constitution is only a procedural document that allows majorities to make decisions, restricted only by the specific guarantees in the Bill of Rights. Whatever "substance" the Constitution acquires must be determined by Congress acting as the representative of the will of the majority. In attempting to define property for purposes of the fifth amendment, Taney in *Dred Scott* was merely substituting his own values for those of the Congress. Jaffa, however, argues that *Dred Scott* was not a case of judicial activism, since the Missouri Compromise Act forbidding slavery in the remaining portions of the Louisiana Purchase Territory had already been repealed by the Kansas-Nebraska Act of 1854. More importantly, in the Compromise of 1850, Congress had specifically allowed for appeals of any disputes regarding the status of slavery in the Utah and New Mexico territories directly to the Supreme Court. That is to say, Congress had specifically requested the Supreme Court to make the decision as to the issue of slavery in the territories. If *Dred Scott* is an example of "judicial activism," then it was "judicial activism" authorized in advance by the Congress!

The use of the concept of "substantive due process" is wholly anachronistic. None of the Framers ever used such terms or thought the Constitution was merely a procedural document that could be understood apart from its ends or purposes. The only question that animated the political debate surrounding the *Dred Scott* decision was whether a slave was a person or property and what the obligations of the federal government were in protecting persons and property. The Constitution itself is ambiguous; it refers to slaves as "persons" but also regards them as "property." Certainly an individual's "due process" rights under the fifth amendment are conditioned upon a prior determination of whether the individual is a "person" or "property." And this is impossible to determine within the "four corners of the Constitution." Bork, of course, would leave it for Congress to determine the issue: "The definition of what is or is not property would seem at least as an original matter, a question for legislatures."[19]

Madison, however, had argued, in his famous June 8, 1789, speech introducing the Bill of Rights in the First Congress, that the greatest danger to liberty resides in "the legislative, for it is the most powerful, and most likely to be abused, because it is under the least control." "Independent tribunals of justice," Madison concluded, "will consider themselves in a peculiar manner the guardians of those rights expressly stipulated for in the constitution by the declaration of rights." Indeed, courts will provide an "impenetrable bulwark" against the violations of individual rights.[20] Here, Madison was merely echoing Hamilton's argument in *The Federalist*, number 78 (even to the extent of using the same language). If Madison and Hamilton are correct, it was not only appropriate, but absolutely necessary, for the Court to determine whether Scott was a person entitled to "life, liberty, or property" or whether he was merely a chattel, the property of another. Scott's due process rights—or conversely the rights of his master—were conditioned upon such a prior determination.

Unfortunately for the originalists, Taney also considered himself to be an originalist—and in fact was an originalist. The clauses of the Constitution, Taney argued in his *Dred Scott* opinion, must bear the same meaning that "they were intended to bear when the instrument was framed and adopted. . . . If any of its provisions are deemed unjust, there is a mode prescribed in the instrument itself by which it may be amended; but while it remains unaltered, it must be construed now as it was understood at the time of its adoption. . . . Any other rule of construction would abrogate the judicial character of this court, and make it the mere reflex of the popular opinion or passion of the day. This court was not created by the Constitution for such purposes" (19 How. 426 [1857]; *OI*, pp. 13–14). No originalist could possibly disagree with this statement of the jurisprudence of original intent. But while Taney stated the principles of interpretation correctly, he, like Bork and the whole tribe of "originalists," was unable to give an accurate account of the Framers' intentions.

Although Taney saw the necessity of confronting the Declaration, he utterly mistook its meaning. While he admitted that the language of the Declaration was capacious enough "to embrace the whole human family," he nevertheless believed that no one, given the historical circumstances of its adoption, could possibly conclude that the language of the Declaration was meant to include blacks of African descent. Indeed, it was "a fixed and universal " opinion, Taney wrote, "that the negro might justly and lawfully be reduced to slavery for his benefit" (at 407). Besides, "the conduct of the distinguished men who framed the Declaration of Independence would have been utterly and flagrantly inconsistent with the principles they asserted" had they intended to include blacks in the statement "all men are created equal" (at 410). Had the authors of the Declaration meant what they said, they would have at once emancipated slaves. Taney thus imputes to the authors of the Declaration a duty derived from a kind of categorical imperative—if they believed what they said, they would have acted on their belief; their failure to act is proof that they didn't believe that "all men are created equal." It is more than evident that Taney misunderstood the element of political prudence embodied in the Declaration's principles (*OI*, pp. 29, 239, 245, 281, 304–5). Lincoln accurately reflected this element in his famous "Dred Scott Speech" opposing Taney's decision. The authors of the Declaration, Lincoln stated,

> did not mean to assert the obvious untruth, that all men were then actually enjoying that equality, nor yet, that they were about to confer it immediately upon them. In fact they had no such power to confer such a boon. They meant simply to declare the *right*, so that the *enforcement* of it might follow as fast as circumstances should permit.[21]

Taney nevertheless concluded that under the "original" understanding of both the Declaration and the Constitution, no black of African descent could ever be a citizen of the United States and the Constitution regards slaves as property with a status no different than any other form of property. Since slaves are property, the federal government has "the power coupled with the duty of guarding and protecting the owner in his rights" (at 452). Taney thus demonstrated that it is not enough merely to invoke the jurisprudence of original intent. Its invocation must be merely a prelude to determining what in fact the true intentions of the Framers were. Both Taney and Bork deny the relevance of the natural law principles of the Declaration in determining the question of whether a person can be property within the meaning of the fifth amendment. For Taney a kind of historicism is dispositive; for Bork, "it is a question for legislatures." Both fail to discern the intentions of the Framers.

It is Jaffa's long-held position that "[i]n asking what were the original intentions of the Founding Fathers, we are asking what principles of moral and political philosophy guided them. We are not asking their personal judgments on contingent matters" (*OI*, pp. 41–42). Jaffa points to evidence from a variety

of sources indicating that it was the explicit intention of the Framers to base the Constitution on the natural law principles of the Declaration. Passages from *The Federalist*, from the Convention Debates, from the writings of Jefferson, Washington, Madison, James Wilson, Hamilton, numerous state constitutions, public proclamations, and sermons make this an indisputable point. Indeed, John Hancock, president of the Continental Congress, in his official letter transmitting the Declaration to the States remarked that since it would serve as the "Ground and Foundation" of any future government, the people should "be universally informed of it."[22] John Marshall certainly understood the extent to which the Constitution was animated by natural law principles. His decision in *Marbury v. Madison* (1803) is a primer on the social contract origins of civil society. Yet the plethora of historical evidence is disputed by Bork and his epigones; they find no evidence that the Framers relied on the Declaration in drafting the Constitution, nor any indication that they intended the Constitution to be interpreted in the light of natural law principles.[23] One must surely wonder when "We the people of the United States"—the creators of the Constitution—became a "people" if not by the constitutive act of the Declaration. Surely, the "one people" and the "good people" of the Declaration are the same as "We the people" of the Constitution.[24] Indeed, in light of the evidence it would be difficult to deny that the Declaration occupied the "authoritative role . . . for the whole revolutionary generation, and most certainly for those who framed and those who ratified the Constitution of 1787" (*OI*, p. 26). Jefferson himself said that the Declaration was "intended to be an expression of the American mind" (Letter to Henry Lee, May 8, 1825). Given its universal acceptance, it should not be surprising that extended dissertations and arguments were not published advocating the acceptance of its principles.

I believe that Jaffa has persuasively argued that "[a] jurisprudence of original intent would then of necessity have been—in decisive respects—a jurisprudence of natural law or natural right" (*OI*, p 26). It is the principle of natural human equality that points to nature or natural right. The Declaration's statement that "all men are created equal" affirms the existence of a created universe in which rationality adheres in the very idea of nature itself.

> The equality of man proclaimed by the Declaration of Independence is to be understood first of all by comparison with the inequality that characterizes man's relationship with the lower orders of living beings. In comparison with this inequality there is nothing more evident, in the familiar words of John Locke, than that no human being is marked out by nature to rule, while others are marked out for subjection. (*OI*, pp. 78–79).

Equality thus must be understood in the light of the "great chain of being." And it is in this light that equality becomes the ground of morality. As Jaffa notes, "the inequality of man and beast, and of man and God . . . implies an objective order of being, upon which is founded a prescriptive moral order" (*OI*, p. 323).

And it is the existence of this "prescriptive moral order" that allows Jaffa to remark—correctly in my opinion—that "[t]he idea of 'the laws of nature and of nature's God' is derived from classical political philosophy" (*OI*, p. 355). In Jaffa's view Locke's explication of the laws of nature points to the classics. Jaffa no longer sees Locke as a radically modern influence on the American Founding. Among other things, it is clear that the Framers did not understand Locke as a radical modern. Rather, the exoteric Locke was easily reconcilable with an understanding of "the laws of nature and nature's God" as an expression of the objective order of being compatible with the teachings of the classical political philosophers. A recent scholar, however, has argued that it makes little difference whether the Framers relied on the exoteric teachings of Locke or his radically modern esoteric teachings—the esoteric teaching will eventually undermine and subvert any political practice premised on his seemingly traditional view of the laws of nature.[25]

Equality is understood in the light of the inequality of man and God on the one hand and man and beast on the other. This surely reminds us of Aristotle's description of man in the *Politics* as the in-between being: man is neither beast nor God. The providential rule of God over man, because it would proceed from perfect wisdom, would not require the consent of man. Similarly, it would be ludicrous to think that man's rule over the beasts requires their consent, i.e., the consent of those without rational will. Among men, consent is properly regarded as the reciprocal of equality—because by nature there are no natural rulers, only consent can legitimate rule. It is true that virtue or human excellence does give some the "right to rule"; but "[i]t is a right which comes to light by virtue of the prior recognition of the equality of mankind and of the rule of law constructed upon its premises" (*OI*, p. 79). The rule of law—in Aristotle's terms the rule of reason without passion—is the substitute for the rule of the wise. And the "fallibility of human reason" also requires the institution of limited government with such constitutional devices as the separation of powers. This is all designed to create the conditions where it is possible for the "reason" of "the public . . . to control and regulate the government." And while "the laws of nature and nature's God" have their ultimate roots in classical political philosophy, Jaffa clearly maintains that "[t]he classical political solutions are strictly speaking only for the ancient city." Indeed, Jaffa argues,

> the Declaration addressed a problem peculiarly that of the Christian West, arising from the conflicting claims of reason and revelation. The idea of human equality, independent of sectarian identity, led to the idea of the enlightened consent of the governed as the ground of law. It enfranchised Aristotle's idea of law as "reason unaffected by desire" by removing from the jurisdiction of theology and theologians the judgment of rationality. It was no less pious for doing so, because it incorporated into the idea of enlightened consent respect for the rights with which all mankind had been endowed by their Creator. . . . In the Declaration—and more

> generally in the American Founding—we find a principled ground for law that we cannot find in Aristotle. What we do find, however, is fully in accordance with Aristotle's intention, within a framework consistent with biblical religion. (*OI*, p. 322)

Thus, the genius of the American Founding—and the basis for the rule of law understood in the Aristotelian sense—is the recognition of the claims of both reason and revelation. As Jaffa notes, the truth of the Declaration is "a truth no less of unassisted human reason than of divine revelation" (*OI*, p. 350).

It has been argued that the reliance on equality as the regime principle is misplaced because equality will inevitably degenerate into "permissive egalitarianism." As Anastaplo put it, "[d]edication to equality can no doubt contribute to justice and the common good . . . [b]ut it can also lead to an emphasis upon self-centeredness and upon private right—and these in turn can promote relativism, if not even nihilism, and hence another kind of tyranny." And in an idea made popular by Tocqueville, Anastaplo concludes that "[c]ertainly, mediocrity can easily become the order of the day when equality is made too much of" ("Seven Questions for Professor Jaffa," in *OI*, p. 174). "Permissive egalitarianism" is thus seen as the enemy of liberty as well as human excellence. For the Founding generation, of course, the words "liberty" and "equality" were virtually synonymous terms. Indeed, liberty found its ground in natural human equality. Tocqueville never saw the importance of the Declaration as a statement of regime principles; rather for him—and his modern-day followers—equality meant primarily an equality of condition. Liberty was opposed to equality because, for Tocqueville, liberty meant the cultivation of talents and abilities that would lead to an inequality of condition. But the Framers surely did not believe that there was an historically fated necessity that equality and liberty would become antagonistic elements of the regime. Those who argue that the principle of equality inevitably put the regime on the slippery slope to equality of results have succumbed to a kind of historicism that is expressly excluded from any proper understanding of natural human equality, i.e., equality understood in terms of the principles of natural right.

It has also been argued that egalitarian natural right requires too much "dilution" to be a genuine expression of natural right or the foundation of a decent politics. Indeed, one commentator has recently written 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. Even if such a regime seems powerful at the moment, it will be subject to revolution by the partisans, in this case those of the few, whom it ignores." This analysis is said to be derived from the Aristotelian point of view that regimes are vulnerable and subject to revolution because they are "partial and partisan. Although they claim to advance the common good, in fact they represent the good of a party, typically the party of the few or of the many."[26] Thus the Framers' notion that the principle of equality, properly understood as the

equal protection of equal rights, could provide the common ground for the few and the many is merely an illusion—or perhaps a deception. But the principle of distributive justice inherent in the idea of natural equality is equal opportunity, that there are no preordained class or caste barriers to the expression of natural inequalities.

Indeed, the genius of the American experiment was to replace pseudoaristocracy with natural aristocracy. Jefferson, in an oft-quoted letter to John Adams, remarked that

> the natural aristocracy I consider as the most precious gift of nature for the instruction, the trusts, and government of society. And indeed it would have been inconsistent in creation to have formed man for the social state, and not to have provided virtue and wisdom enough to manage the concerns of the society. May we not even say that that form of government is the best which provides the most effectually for a pure selection of these natural aristoi into the offices of government? The artificial aristocracy is a mischievous ingredient in government, and provision should be made to prevent its ascendancy.[27]

Both the partisans of the few and the many can support this principle of natural justice which reconciles both the claims of equality and the claims of inequality—equality of opportunity and the legitimacy of the inequality of results. Surely this is the meaning of Madison's famous statement in *The Federalist*, number 10, that "[t]he protection of different and unequal faculties" is "the first object of Government." It is only with some hyperbole that one could call this "the truest and best equality"—"the natural equality given on each occasion to unequal men" (*Laws*, 757d).

It is true that Strauss, on occasion, argued that "natural right or natural law must be diluted in order to become compatible with the requirements of the city" (*Natural Right and History*, p. 152; "On Natural Law," pp. 139ff.; *Liberalism Ancient and Modern*, p. 15). This observation has less force, of course, if the natural right principles have the support of the regnant morality and religion. In any case, Strauss makes an exception for Aristotelian natural right where "there is no fundamental disproportion between natural right and the requirements of political society, or there is no essential need for the dilution of natural right" (*Natural Right and History*, p. 156; "On Natural Law," pp. 139–40). As far as the necessity of "dilution" in Platonic natural right, Strauss makes reference, not only to the obvious case of the *Republic*, but also to Plato's "most political work" ("even . . . his only political work"),[28] the *Laws* (756e–758a) (*Natural Right and History*, p. 153; "On Natural Law," p. 139). The Athenian Stranger teaches that the regime should always aim at the mean between monarchy and democracy, two regimes animated by incompatible notions of equality. It is necessary sometimes to blur the distinction between the two forms of equality if civil war is to be avoided. The "blurring" principally involves the assignment of equality by lot—or as we might say today, equality of result. Among a host of other considerations, it is clear that this kind of

"dilution" was no part of the American experiment. The classics generally aimed at a kind of mixed regime, a regime not wholly incompatible, as Strauss notes, with the one described in *The Federalist* (*Liberalism Ancient and Modern*, p. 15).

In any case, the analysis of Plato and Aristotle was predicated on a regime of scarcity—the few wealthy who had leisure to acquire virtue and education and the many poor. The Framers, however, explicitly looked forward to the end of the regime of scarcity and all that this implied for the establishment of constitutionalism and the rule of law. Strauss noted that "[i]t is a demand of justice that there should be a reasonable correspondence between the social hierarchy and the natural hierarchy. The lack of such a correspondence in the old scheme was defended by the fundamental fact of scarcity." The "old scheme" was thus exposed for what it was: oligarchy masquerading as aristocracy. The doctrine of natural equality, "that all men have the same natural rights" is the foundation of natural justice "provided one uses this rule of thumb as the major premise for reaching the conclusion that everyone should be given the same opportunity as everyone else: natural inequality has its rightful place in the use, nonuse, or abuse of opportunity in the race as distinguished from at the start. Thus it becomes possible to abolish many injustices or at least many things which had become injustices."[29]

As Jaffa's many protagonists surely know—especially the conservatives—he is strident in his efforts to articulate a natural right ground for the American regime that will serve as an antidote to the corrosive effects of modern philosophy's assault on both reason and revelation. The triumph of moral relativism grounded in nihilism will inevitably lead to tyranny. Nihilism is the belief that the metaphysical freedom of man is merely a delusion. Strauss, however, made it clear that he believed the human mind was at home in the universe: "By becoming aware of the dignity of the mind, we realize the true ground of the dignity of man and therewith the goodness of the world, whether we understand it as created or as uncreated, which is the home of man because it is the home of the human mind" (*Liberalism Ancient and Modern*, p. 8). But it is a very short step indeed from the denial of man's metaphysical freedom to the denial of his moral and political freedom. At bottom, the denial of man's metaphysical freedom is a denial of man's nature. What is called "nature" is either the epiphenominal product of history or simply a self-willed delusion. Standing against these currents of contemporary nihilism are the natural law and natural right principles of the Declaration of Independence.

NOTES

1. *Crisis* (November, 1993), p. 2: "The Founding Fathers, as one of the most exceptional generations of political men who ever lived, are not to be understood as primarily Hobbesians, Lockeans, or Aristotelians. They were rather *phronemoi*, morally and politically wise men, the kind of characters from whom Aristotle himself drew his portraits of moral and political virtues.

And Aristotle understood what these virtues were, not from speculative thought as such, but from contemplating such actual examples of the virtues as came under his observation. The source of his ability to recognize these virtues, was not philosophy, but nature, the reality which was the ground of philosophy. . . . The vitality of classical political philosophy—why it is so close to the spirit of the statesmanship of the American Founding—is that it is grounded in the reality of political life itself." "Humanizing Certitudes and Impoverishing Doubts," *Interpretation*, vol. 16, no. 1 (Fall, 1988), pp. 124–25.

2. "The Legacy of Leo Strauss," *Claremont Review of Books*, vol. 3, no. 3 (Fall, 1984), p. 14 (quoting Strauss, "The Three Waves of Modernity," in Hilail Gildin, ed., *Political Philosophy: Six Essays by Leo Strauss* [Indianapolis: Bobbs-Merrill Co., 1975], p. 98).

3. "Progress or Return?" in Thomas L. Pangle, ed., *The Rebirth of Classical Political Rationalism* (Chicago: University of Chicago Press, 1989), pp. 242–43.

4. *Natural Right and History* (Chicago: University of Chicago Press, 1953), p. 164.

5. "Equality, Wisdom, Morality and Consent," *Interpretation*, vol. 15, no. 1 (January, 1987), pp. 26–27; *Original Intent and the Framers of the Constitution*, pp. 314–15, 321, 322, 349, 355–56 (hereinafter cited in the text as *OI*).

6. Some remarkable examples are John Tucker, "An Election Sermon," in Charles Hyneman and Donald Lutz, eds., *American Political Writing During the Founding Era, 1760–1805* (Indianapolis: Liberty Press, 1983), vol. 1, pp. 161–62; Samuel Cooper, "A Sermon on the Day of the Commencement of the Constitution," in Ellis Sandoz, ed., *Political Sermons of the American Founding Era, 1730–1805* (Indianapolis: Liberty Press, 1991), pp. 637, 639, 642, 656; John Leland, "The Rights of Conscience Inalienable," in ibid., pp. 1084 ff.

7. Strauss chose two passages from the Old Testament as epigraphs to *Natural Right and History*, even though there is "no knowledge of natural right as such in the Old Testament" (p. 81). While "knowledge" of natural right is absent from the Old Testament, the experience of natural right is manifestly present. Cf. *Jerusalem and Athens*, pp. 17, 22–23; "Progress or Return," p. 256; "On Natural Law," in Thomas L. Pangle, ed., *Studies in Platonic Political Philosophy* (Chicago: University of Chicago Press, 1983), p. 138. The use of the epigraphs also shows that Strauss understood natural right in the light of the teachings of the Old Testament, i.e., in the light of revelation.

8. *What Is Political Philosophy?* (New York: The Free Press, 1959), p. 81.

9. *Natural Right and History*, p. 99; Jaffa, *American Conservatism and the American Founding* (Durham, NC: Carolina Academic Press, 1984), p. 84.

10. Jaffa, "The Legacy of Leo Strauss," p. 20; Harry Neumann, *Liberalism* (Durham, NC: Carolina Academic Press, 1991), pp. 86–88.

11. *The City and Man* (Chicago: Rand McNally & Co., 1964), p. 11.

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

13. *Thoughts On Machiavelli* (Glencoe, IL: The Free Press, 1958), pp. 13, 14.

14. See Anastaplo, "Seven Questions for Professor Jaffa," questions 1 and 7, *OI*, pp. 172–73, 176–77; and Stone, "Professor Harry V. Jaffa Divides the House," *OI*, pp. 139 ff.

15. *The Tempting of America* (New York: The Free Press, 1990), pp. 162, 200.

16. "The Notion of a Living Constitution," *Texas Law Review*, vol. 54 (1976), p. 679 (quoted in *OI*, p. 85).

17. *The Tempting of America*, p. 242; John H. Ely, *Democracy and Distrust: A Theory of Judicial Review* (Cambridge: Harvard University Press, 1980), p. 59. Ely, upon whom Bork relies, remarks that "'reason' as a source of fundamental values is . best stated in the alternative: either it is an empty source . . or, if not empty, it is so flagrantly elitist and undemocratic that it should be dismissed forthwith." Neither Ely nor Bork indicates whether he believes himself to be a member of the reasoning class. Bork himself advocates a kind of judicial activism, however, when he argues that certain parts of the Constitution should be ignored because the text, history, and logical structure of these clauses cannot be understood—it is as if they have been rendered indecipherable by "inkblots" on the text. Those who assume that all parts of a written constitution must have force (no part can be rendered inoperable or superfluous by interpretation) do so, according to Bork, only on the abstract "theory that every part of the Constitution must be used" (p. 166). If it is possible to ignore parts of the Constitution one does not like under the pretext that it is obscured by "inkblots,"

why is it not also legitimate to put into the Constitution clauses that one would like to have there? What is the essential difference? Bork makes his "inkblot" argument most forcefully in regard to the ninth amendment. He incorrectly asserts that there is "almost no history that would indicate what the ninth amendment was intended to accomplish" (p. 183). Madison made it clear, however, in his well-known speech before the House on June 8, 1789, that the amendment was designed to protect the unenumerated natural rights retained by the people. To Bork, however, any reference to natural rights propels us into the irrational realm of values and totalities. Like his liberal activist counterparts, Bork asserts the priority of society to the individual. Rights are conferred by government, they do not exist prior to the advent of government—thus there can be no "unenumerated rights." Bork's confusion is amply illustrated by his recent statement that "[i]t is particularly nonsensical to quote the Declaration of Independence's enunciation of a right to alter or abolish government. . . . Having established a representative government . . the Founders proceeded to enact laws that denied any right of revolution on these shores" (*Commentary*, vol. 99, no. 5 [May, 1995], p. 15). Typically, Bork does not give any citations to the laws in question. See Erler, "The Ninth Amendment and Contemporary Jurisprudence," in Eugene Hickok, Jr., ed., *The Bill of Rights: Original Meaning and Current Understanding* (Charlottesville: University Press of Virginia, 1991), pp. 432–51.

18. Jaffa's critique of Bork continues in *Storm Over the Constitution: Jaffa Answers Bork* (Claremont: The Claremont Institute, 1994).

19. The Tempting of America, pp. 30–31. Bork also seems to assert the fantastic idea that the federal government could have freed the slaves in states that allowed slavery under the "takings clause" of the fifth amendment as long as it provided the slave owners with compensation. But here Bork has succumbed to an interpretation of the Constitution not warranted by its text, history, or structure. The fifth amendment allows for the compensated taking of property only for "public use," not "public purposes." It would be difficult to imagine that anyone in 1857 believed that the "takings clause" could be used for such purposes. The Supreme Court for the last fifty years or so has interpreted "public use" to mean "public purpose," but a keen-eyed textualist such as Bork should know the difference between the Constitution and what the Court says it is.

20. 1 *Annals of Congress* (Gales and Seaton ed., 1834), pp. 457–58.

21. Collected Works (New Brunswick, NJ: Rutgers University Press, 1953), vol. 2, p. 406. Emphasis original.

22. Paul H. Smith, ed., *Letters of Delegates to Congress, 1774–1789* (Washington, D.C., 1979–), vol. 4, p. 396.

23. See Charles J. Cooper, "Harry Jaffa's Bad Originalism," *Public Interest Law Review* (1994), pp. 189–215, for a statement of one of Bork's supporters. Many of the sources that Cooper uses to demonstrate that natural law principles did not animate the Framers are actually paraphrases of the Declaration itself! For a particularly obvious example, see p. 205.

24. Ken Masugi pointed out that Bork's "aversion to natural right" is so thoroughgoing that in reprinting the text of the Constitution in *The Tempting of America*, he deleted the Constitution's one specific reference to the Declaration in Article VII: "done in Convention by the Unanimous Consent of the States present the Seventeenth Day of September in the Year of our Lord one thousand seven hundred and Eighty seven and the Independence of the United States of America the Twelfth" (*Interpretation*, vol. 19, no. 1 [Fall, 1991], p. 89). It is necessary to add that Bork's bowdlerization of the text also leaves out the Constitution's only reference to "our Lord." One could thus say that both reason and revelation are excluded.

25. Michael P. Zuckert, *Natural Rights and the New Republicanism* (Princeton: Princeton University Press, 1994), p. 288.

26. Harvey C. Mansfield, Jr., "Returning to the Founders: the Debate on the Constitution," *The New Criterion*, vol. 12, no. 1 (Sept. 1993), pp. 50–51.

27. Letter to John Adams, Oct. 28, 1813; See *What Is Political Philosophy?*, p. 86.

28. *The Argument and Action of Plato's Laws* (Chicago: University of Chicago Press, 1975), p. 1; *What Is Political Philosophy?*, p. 29.

29. *Liberalism Ancient and Modern*, p. 24; "The Crisis of Political Philosophy," in Harold J. Spaeth, ed., *The Predicament of Modern Politics* (Detroit: University of Detroit Press, 1964), pp. 93–94.