

Imprimis

November 2003 • Volume 32, Number 11

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Our Embattled Constitution

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Introduction of Harry V. Jaffa

Larry P. Arnn

President, Hillsdale College

Typically we have our students introduce speakers here on campus, but for two reasons I take this opportunity myself. The first is that our speaker today is my teacher, and so a student is introducing him after all. The second is that the introduction of him is a diplomatic occasion that presents certain pitfalls. I will tell you briefly about both these things.

I first met Harry Jaffa in August 1974. I was a newly arrived graduate student out in Claremont. I was privileged to be taken to his home by my friend, later the husband of my sister, Peter Schramm. We were picking up the professor for class, my first as a graduate student. Professor Jaffa was sporting a sling on that day from a bicycle accident. I soon learned that if you wished Professor Jaffa to take any notice of you, you could write a very good but also brief paper, which is not easy, or you could take up bicycle racing, which is also not easy. But in the latter case, even mediocrity would do if it was accompanied by serious effort. So that is what I eventually did.

Professor Jaffa was not yet ready for class when we arrived. He asked Peter what time the class was to be held. Then he asked him what it was about. This struck me as unusual, as I had been anticipating this occasion for many months. We arrived a little late. In this class, we were to read the great *Nicomachean Ethics* of Aristotle. We set out



reading this book – with some interruptions to read from Professor Jaffa’s recent correspondence – at a deliberate pace. By the end of the first week, we were still talking mostly about the first sentence. This sentence contains four Greek words: *praxis*, *prohairesis*, *dynamis* and *techné*. Aristotle writes that each of these things “seems to aim at some good.” I remember the four words today, 29 years later, as if this discussion had been last week. Professor Jaffa wished us to understand that these words encompass every kind of voluntary human action. All that people do aims for the good.

By the middle of the term, we were onto the third or fourth page of the book. Along the way, we began to identify this good for which all actions aim. The points were examined as controversial propositions, not to be taken for granted, but to be questioned and investigated. And yet, in part because of this, one began to see what purposeful study was like, and in that what purposeful life is like. Professor Jaffa has written an essay entitled “The Primacy of the Good.” This question of the good plays a large part in his thinking. This makes him the enemy of many aspects of modern thought. Ask him sometime how he regards the idea of homosexual marriage, for example.

For a young man such as I was, he provided the stuff to which a career and a life could be devoted. As much as anything that I have studied, I am under the impression of those first classes today.

I would not say that Professor Jaffa was a particularly organized teacher. By the end of the class, we had gotten along toward the end of the first of the ten books (which are like chapters) of the *Ethics*. We even skipped the important part in the first book in which Aristotle makes his argument against Plato. There was not enough time, in a full semester class about a single book, to go into that.

Some of our fellow students were impatient with this, and they would make the comment that they were not getting their money’s worth. But my friends and I thought him, and think him, a great teacher. Most of you in this room know what that is like. I know it mainly from him.

I said that there are certain pitfalls in making an introduction of this man. Bill Buckley once said famously that if you think it is hard to argue with Professor Jaffa,

try agreeing with him. I remember in another class, Professor Jaffa came upon a passage in which Leo Strauss used the word “polemical.” That word comes from the Greek word for war. Professor Jaffa embarked on an extensive discourse about how much Aristotle liked to fight. So does Professor Jaffa.

He has been likened to an Old Testament prophet. Most of his criticisms are made of his own people, the chosen people. Professor Jaffa is an important man in the conservative movement. He wrote the famous speech in 1964 in which Barry Goldwater said that “extremism in defense of liberty is no vice, and moderation in pursuit of justice is no virtue.” That passage is understood by some to have been a disaster for the Goldwater campaign. But it was repeated by Goldwater in the Reagan campaign of 1984 at the Republican convention, at the invitation of Ronald Reagan himself.

During the course of his career, Professor Jaffa has written much about our country. He believes that the founding of our country is one of the few great events of political history, and the greatest event of modern political history. He believes that its greatness lies in its devotion to the principles stated in the Declaration of Independence. He believes that the full meaning of the principles is revealed in the practice of our people, especially as that practice is represented in the deeds and words of our greatest statesmen. He believes that a line unbroken stretches from Washington to Lincoln, a line that reveals our country to be the best possible regime in the world – at least as the world exists since the discovery of philosophy in Athens and the birth of universal monotheism in Jerusalem.

There are many conservative critics of this understanding, specifically of our founding principles and of Abraham Lincoln. Professor Jaffa is their chief opponent. Admittedly, he agreed with some of their criticisms at some points in his career, especially in his great book *Crisis of the House Divided*. His own life has been a process of learning, I venture to say. He has worked forward to his understanding of America from a departure in the classics, and backward toward the founding from a departure in Lincoln. He may have thought at one point

that Lincoln corrected a baseness in the American revolution. Today, I think he would argue instead that Lincoln completed a nobility in the founding. One must read his wonderful latest book, *A New Birth of Freedom*, to see if I am right about this.

You may hear from him today about some of his controversies with conservatives, including some who have done great service to our country, some of that service recently. He is plenty able to make his own case about this and about anything else. I will say only that he seeks to hold us to the high standard of those who made our nation possible, and he seems to think, although sometimes he will not say, that these conservatives are the ones most redeemable.

I might say a word in closing, here in my home and to my friends and colleagues on this campus, as to why I should have hearkened to this man. I grew up, after all, in the south, in a Christian family, to which faith I cling. Our place fought for the Old South. Professor Jaffa is a northerner, a Lincoln man, and a Jew.

At the time I was studying most closely with this man, I would likely have said that the excitement of learning, coupled with the

prospect it offered of high ambition and a chance to understand and serve some great cause, were the reasons. I would say those things still today. But in my age I would add that my mother was, and my father is, one of those common people of whom Lincoln said the Lord was fond, because He made so many of them. My father served in the armed forces of our country, and he thought that was one of the best things he did. He taught me to think that ours was the greatest nation precisely because it treated people like him as if they were as good as kings – or better, because it is not really good to be a king. Also he taught me that right was right and wrong was wrong.

When you go to most colleges today you are told that people like my father are naive, the victims of forces and ideas they are not equipped to understand. Professor Jaffa would never think or say such a thing. He teaches that there are indeed great complexities inherent in all questions of patriotism and decency. But it is the job of those who have the capacity to understand them to defend the simple, and also the true, account of those subjects given by ordinary Americans.

I present him to you because of this goodness in him that is coupled with his greatness.

Dr. Jaffa delivered this speech on the campus of Hillsdale College on September 15, 2003.

I am grateful to President Arnn for that introduction, and to Hillsdale College for the opportunity to speak here.

The unique power of the Lincoln theme is suggested by the fact that it has occasioned more titles in the world's libraries than any other name. For some time it has been one of the three most numerous – the other two being Jesus Christ and William Shakespeare. Recently it has surpassed the others. This is even more remarkable when one considers the comparative shortness of time since Lincoln's life. It is also remarkable, in this light, that Allen Guelzo, in his 1999 book, *Abraham Lincoln: Redeemer President*,

declared that my book *Crisis of the House Divided*, published in 1959, was “incontestably the greatest Lincoln book of the century.” I hasten to point out that this is not a consensus view – but, as Thomas Aquinas would say, what is evident to the wise is not evident to all.

Whatever the rank of *Crisis*, it is now supplemented by its sequel, *A New Birth of Freedom: Abraham Lincoln and the Coming of the Civil War*. What is unique about both books, in the context of Lincoln literature, is that I have taken Lincoln's teaching about the Declaration of Independence as Lincoln himself regarded it – as a standard, not merely for Lincoln's time, but for all time. I have done this, not merely as agreeing with Lincoln, but as a matter of demonstrable philosophic truth.

The Problem of Lincoln Scholarship

When I began my work on the Lincoln-Douglas debates in 1946, there had never been any attempt to describe or analyze the arguments put forth in those debates. To the historians, they were merely links in the chain of causes that brought Lincoln to power. The scholarly consensus then was that the Civil War came about because unscrupulous politicians on both sides of the slavery issue, seeking political advantage, inflamed public opinion until compromise became impossible. Of all those who rode to power by exploiting the slavery question, the most prominent was Lincoln. He was regarded simply as the most successful of the unscrupulous.

Douglas, his opponent in the 1858 Illinois senatorial contest, tried vainly – it was said – to dampen the passions over slavery with his doctrine of popular sovereignty. By letting the people of each territory decide for themselves whether or not to have slavery among their domestic institutions, the slavery question would be confined to the territories and kept out of Congress. It would thus cease to agitate the nation as a whole. Douglas, by ignoring or denying the immorality of slavery, was seen as the more moral of the two! He was thus a model statesman, someone who would calm the turbulent waters.

This was the view of Lincoln dominant before the publication of *Crisis of the House Divided*. In 1946, the prevalent academic view of moral questions was that they were insoluble by reason. By considering slavery a

question to be decided by self-interest rather than morality, Douglas was thought to be actually on the side of morality. By so doing, he made the uncompromisable compromisable. Lincoln, by insisting that the moral condemnation of slavery had to be the basis of all public policy concerning it, was held to be a herald of unreason, of passion and of war.

Today, nearly every good thing that we enjoy, and nearly every good thing that the world enjoys because of us, we owe to the principles enshrined in our founding. It is shameful that, at the very moment in which the work of our Founders is displaying its greatest success, we witness the abandonment of their principles.

I believe I was the first to defend Lincoln on Lincoln's own ground. I did so by taking the self-evident truths of the Declaration of Independence – as did Lincoln – as assertions of right reason, and not of opinion merely. And I have maintained with Lincoln that right reason, no less than Scripture, is the voice of God. According to Lincoln, those who would deny freedom to others could not, under a just God, long remain in possession of their own. When Lincoln said that as he would not be a slave, so he would not be a master, he was saying neither more nor less than Jesus when he said, "Whatsoever you would that others do unto you, do you unto them." Prophecy was with us then. It is with us yet, if we would hear it.

Academic opinion on the rationality of morality has declined much further in the 40-plus years since I wrote *Crisis*. Campuses across the country are in the grip of something called political correctness. A main feature of political correctness is something called cultural relativism or diversity. Since we do not know what is right or wrong, we show our sophistication by patronizing indifferently the different concepts of right and wrong as they manifest themselves in different cultures or different ways of life. Unfortunately, some cultures celebrate (among other horrors too numerous to

mention) human sacrifice, suttee, cannibalism and slavery. So political correctness arbitrarily rules out those cultures it does not like, and morality becomes a matter of what you like. Since reason is held to be impotent, it is replaced by passionate commitment, as it was in the Third Reich. Theoretical indifference thus mutates into blind partisanship.

We see the effects of this all around us. Perhaps it is most conspicuous in heterosexual and homosexual promiscuity and, in general, in the disintegration of the monogamous family. We see it as well in the rise of an environmental movement, which, like communism, claims the authority of spurious science as a means to despotic control of our lives.

The Problem of Conservative Jurisprudence

But the bad news is not only from the campuses. My 1994 book, *Original Intent and the Framers of the Constitution*, and my 1999 book, *Storm Over the Constitution*, record the complete alienation of conservative jurisprudence from the principles of the American founding and of Abraham Lincoln. The classic text in this regard is the following:

If such a [democratic] society adopts a constitution and incorporates in that constitution safeguards for individual liberty, these safeguards do indeed take on a generalized moral rightness or goodness. They 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 a people.

The foregoing is from Chief Justice William Rehnquist's celebrated essay on "The Notion of a Living Constitution." The contemptuous reference to "someone's idea of natural justice" is all the consideration he gives to the Constitution of Madison, Jefferson, Marshall and Lincoln! This reflects as well the dominant irrationality of the academic cli-

mate within which Lincoln historians (and American historians generally) have pursued their vocation.

Consider the implications of what the Chief Justice has asserted. If safeguards for individual liberty do not have "*any* intrinsic worth," then neither does individual liberty, nor individual life. This is pure nihilism. The illusion of morality — and it is here regarded only as an illusion — has as its cause nothing but the will of the people who have adopted it.

Now, the Constitution of 1787, besides having safeguards of individual liberty, had safeguards of slavery. These were adopted by the same people at the same time, and hence on Chief Justice Rehnquist's premises, these safeguards of slavery took on the same "generalized moral rightness or goodness" as the safeguards of liberty. This is also exactly the position of the seceding states in 1860 and 1861. By declaring slavery to be a moral wrong, the Republican Party, they contended, had violated the consensus by which the Constitution had been ratified and the Union formed. This was the position against which Lincoln had to contend.

How can a people — any people — adopt a constitution? It must be by some electoral process. In that electoral process, must there not be freedom of speech and of the press, and of the people peaceably to assemble? Must these rights not be recognized beforehand for the election to have any validity? Must it not be recognized, a priori, that the majority has no right to decide how the citizens may worship their God? Must it not be understood, a priori, that the majority may not enslave or expropriate the minority or drive them into exile?

The entire concept of legitimate majority rule is bounded on all sides by a priori conditions, within which alone majority rule may be legitimized. The sum of all these conditions is embodied in what the Founders understood to be the social contract, by which majority rule is authorized. Consent is given thereby, not to the powers of government, but to the *just* powers of government. This also is Lincoln's teaching. On the other hand, Chief Justice Rehnquist's idea of unbounded popular will is perfectly consistent with the plebiscite, which has been the instrument of

“legitimacy” for tyrants from Napoleon to Hitler and Stalin.

Justice Antonin Scalia, following Chief Justice Rehnquist, declares, “The whole theory of democracy . . . is that the majority rules; that is the whole theory of it. You protect minorities only because the majority determines that there are certain minority positions that deserve protection.” But what if the majority does not elect to protect minority positions? Or what if some minorities are protected but not others? In 1857, the Supreme Court, speaking through Chief Justice Roger Taney, declared that majority opinion at the time of the ratification of the Constitution held that black men and women were “so far inferior that they had no rights which white men were bound to respect,” and that they might be reduced to slavery for their own benefit. The proposition “that all men are created equal” was not, he falsely asserted, understood to include black human beings.

Now, Chief Justice Taney was wrong about opinion at the time of the founding. But it was certainly true, on the eve of the Civil War, that white majorities in most, if not all, of the slave states believed in the inferiority of Negroes, and did not believe that Negroes, whether free or slave, were entitled to constitutional protection for their lives, liberties or property. And it is precisely this point of view – whether he knows it or not – that Justice Scalia endorses, when he says that in a democracy, minorities depend upon the majority for their rights. Consider also how this view of minority rights would today justify the “ethnic cleansing” with which whole peoples are obsessed in the Balkans, in Africa, and in Asia. And let us not forget the role of “Know Nothingism” in our own history.

The True Meaning of Original Intent

The struggle over the Constitution today is between those who believe in a “living Constitution” and those who profess their allegiance to a jurisprudence of original intent. The former think the original Constitution to be a mere legacy of a reactionary past, featuring slavery, the subjection

of women, capital punishment, and economic and social inequality. Their constitution is one in which a wise Supreme Court can order wise constitutional remedies for an endless list of alleged wrongs. Since there is no limit to what may be alleged to be wrong, there is no limit to what may be a constitutional remedy. This is unlimited government by a judicial oligarchy, a virtual negation of everything the Founders believed. In substance, the jurists of this “living Constitution” have seceded from the Union of the Founders, as completely as did the slave states that formed the Confederacy in 1861.

We can save the Constitution only by restoring to it a genuine jurisprudence of original intent. This can only be done, as Lincoln did it, by distinguishing the principles of the Constitution of 1787 from the compromises of the Constitution. Lincoln believed that safeguards of individual liberty were indeed possessed of intrinsic worth. They were possessed of intrinsic worth because each individual was endowed by his Creator with unalienable rights. Without question these principles condemned slavery. But slavery was deeply intertwined with the roots of colonial society and could not quickly or easily be extirpated. Slavery was perhaps the oldest institution of human society next to the family. No attempt was ever made to abolish it in the ancient world, notwithstanding the importance of individual liberty to the greatest of the Greeks and Romans. The compromises with slavery in the Constitution of 1787 were means necessary for the ratification of the Constitution. And the ratification of the Constitution, even with its compromises, was morally justified, because every alternative to the Constitution would have been far more favorable to slavery. We must remember that the Founding Fathers, like ourselves and every generation of mankind, were born into a world they did not make. Yet no generation did more to remake for the better the world they inherited. However impatiently and unhistorically we look upon our past, the fourscore and seven years that separate the Declaration of Independence from the Gettysburg Address, seen in the light of all human history, is a remarkably short time in which to have accomplished the great work of emancipation.



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Today, nearly every good thing that we enjoy, and nearly every good thing that the world enjoys because of us, we owe to the principles enshrined in our founding. It is shameful that, at the very moment in which the work of our Founders is displaying its greatest success, we witness the abandonment of their principles. Nowhere is the genesis of this intellectual and moral breakdown more visible than in the scholarly writing on Abraham Lincoln. The logic of Lincoln's commitment to the principles of the Declaration of Independence has, however, never been refuted. It has rather been ignored, and that ignorance treated as if it were a refutation. Our opponents are tied by interests that they cannot admit to arguments that they cannot defend. And the

alienation of conservatives is not less than that of liberals. The struggle for truth will be hard. The end of this deadly ignorance and alienation is not at hand. This is not the beginning of the end. It is not even the end of the beginning. But the battle is joined.



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VOLUME 32 • NUMBER 11

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