

# Endless Battle for Endless Rights

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*Patriotism Is Not Enough: Harry Jaffa, Walter Berns, and the Arguments That Redefined American Conservatism*

By Steven F. Hayward  
(Encounter Books, 2017)

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Harry Jaffa and Walter Berns, two pre-eminent scholars of American constitutionalism and political thought, had much in common. Practically the same age, they were among the first students of the great political philosopher Leo Strauss to apply his insights to the American polity. Both were linked to the conservative movement: Jaffa directly, beginning with his service as an adviser and a speechwriter to the Goldwater presidential campaign; Berns indirectly, thanks to the implications of his writings about the Constitution. Berns expressed admiration for Jaffa's 1959 classic, *Crisis of the House Divided: An Interpretation of the Issues in the Lincoln-Douglas Debates*, while Jaffa praised much of Berns's work. Remarkably, both died on the same day (January 10, 2015), an event eerily reminiscent of the simultaneous demises of Adams and Jefferson on the fiftieth anniversary of the Declaration of Independence. And yet, unlike Adams and Jefferson, these onetime friends became bitter enemies and never reconciled.

Steven Hayward is well equipped to explicate the principles that guided Jaffa's and Berns's scholarship, as well as the grounds of their disagreement. A student of Jaffa's at

the Claremont Graduate School, Hayward befriended Berns at the American Enterprise Institute, where both served as fellows. The author of an acclaimed biography of Ronald Reagan, Hayward has written informatively about environmental issues as well as conservative thought. While devoted to Jaffa for his instruction, Hayward is able to take a critical distance in assessing the controversies that separated him from Berns and to celebrate both men's accomplishments. The book's one significant flaw is that even while Hayward acknowledges Jaffa's career-long combativeness, he downplays the degree to which Jaffa's crusade against numerous ex-friends and judicial conservatives grew out of purely personal pique. In this way, Hayward risks misleading readers about the real reasons for the Berns-Jaffa feud, which not only embarrassed many of their friends but also encouraged an unjustified image of Straussians as factionalists, which only added fuel to the fires of Strauss's typically ill-informed and often highly partisan critics. (For the record, I was a student of Berns's as well as Strauss's, but also was acquainted with Jaffa and am a friend of several of his students.)

Hayward's title comes from a frequent saying of Jaffa's, with which Berns agreed. As Hayward observes, for a nation founded on a set of *principles*, i.e., those enunciated in the Declaration of Independence, "merely having a nation as one's homeland is an insufficient defense." To defend themselves against "nihilists within" as well as "enemies without," Americans need a patriotism grounded in appreciation of the philosophical principles underlying our regime. For both Jaffa and Berns, Abraham Lincoln was the most important articulator of American identity based on dedication to the Declaration's teaching.

American patriotism in this sense is not spontaneous. As Berns emphasized in his 2001 book *Making Patriots*, it requires a never-ending effort of civic education, aimed at engendering a proper understanding and appreciation of America's founding principles. More than a century after the Progressive assault on the Founders' handiwork, leading political figures and movements, from Bernie Sanders to Ruth Bader Ginsburg to Black Lives Matter, deny the truth or the honesty of the Declaration and disparage the Constitution itself. As Hayward reminds us, in his second inaugural address, after approvingly citing the Declaration's preface, President Obama "immediately drew back from embracing it as expressing a rational or timeless truth," referring instead to the authority of "history" for the judgment that the principles the Declaration proclaims "may be self-evident" (Hayward's emphasis).

If the validity of the Declaration's principles is doubtful, one can hardly fault Obama or Ginsburg for hesitating about expressing fealty to them. The issue is whether such public figures have discovered something unknown to Jefferson or Lincoln that calls those principles into question—or whether their doubts ultimately arise, as Jaffa and Berns believed, from the influence of twentieth-century historicism, grounded in the thought of that most antiliberal of

philosophers, Friedrich Nietzsche. As Hayward observes, "By the middle third of the twentieth century most of America's leading philosophers and intellectuals found little in the American tradition to celebrate or draw from as an answer to the political conundrums facing the world." At the same time, Strauss was initiating his reconsideration of classical political philosophy, which would ultimately lead him to question the origins of historicism and its radical expression by Martin Heidegger. This reconsideration paved the way for Jaffa and Berns, along with their colleagues Martin Diamond and Herbert Storing, to reconsider the specifically American political tradition, not with a view to turning the Founders into Platonic philosophers, but to showing that the arguments of participants in the Federalist-Antifederalist debate, or of John Marshall and Lincoln, have a good deal more merit than modern academics appreciate.

Of crucial importance to grasping Strauss's challenge to Heidegger's thought, as Hayward emphasizes, is the latter's disregard of *politics* as the crucial ground for understanding human life, and hence for philosophy. This challenge was Jaffa's and Berns's starting point. In their view, the project of restoring a political science capable of objective evaluation required renewing the sort of citizen-shaping statesmanship epitomized by Lincoln.

That did not mean embracing dogmatism. Contrary to the misrepresentation of Strauss's position by some critics, Hayward writes, "The statesman in the real world can't be bound by a narrow absolutism." As Strauss observed in *Natural Right and History*, "justice and natural right reside...in concrete decisions rather than in general rules." Hence "the Straussian project" endeavors "to overcome the defects of absolutism through the moral latitude of the statesman," albeit with a view to an objective, universally valid "hierarchy of ends" or conception of human excellence and happiness.

Hayward contrasts this view with the position of “consensus liberals” such as Louis Hartz, Richard Hofstadter, and Arthur Schlesinger who dominated academic political thinking in the mid-twentieth century prior to the appearance of Berns’s and Jaffa’s first books. The limitations of their outlook were exemplified by their interpretation of the Civil War, which they regarded as a needless conflict rather than the consequence of a fundamental disagreement. This was far from a merely historiographical problem. As Jaffa foresaw, the adoption of a consistent “popular sovereignty” policy with regard to slavery would ultimately lead to a regime of “willful self-assertion.”

The implications of the principle that democracy is not limited by the natural rights specified in the Declaration can be seen in present-day demands for an endless list of rights ungrounded in nature or the Constitution, including claims to other people’s property and even to control of their speech. Today’s defenders of the claims of “minorities,” as distinguished from individuals, are the spiritual descendants of Calhoun rather than Lincoln. And critics who dismiss Lincoln as a bigot because he didn’t campaign on a platform of “political and social equality” for blacks—which would have ensured his electoral defeat—show not only an underestimation of the necessities of democratic statesmanship but also, as Jaffa demonstrated, an inattentiveness to the subtleties of Lincoln’s rhetoric.

Unfortunately, forgetfulness of the Founders’ and Lincoln’s teachings, combined with the ambitions of politicians eager to expand their power, allowed the principle of equality to exceed the limits imposed by the Declaration. Hayward shows how unlimited egalitarianism became “the basis for an endless welfare state.” This development enabled Progressives (wrongly) to enlist Lincoln as one of their own, while persuading some conservatives to blame Lincoln for

that very reason. In both *Crisis of the House Divided*, where Jaffa represented Lincoln as transforming the Declaration’s teaching by emphasizing our *duty* to respect other people’s rights, and his 2000 *A New Birth of Freedom*, which portrayed the Founders as Aristotelians, Jaffa endeavored to demonstrate that the doctrine of natural equality, properly understood, is the ground of an authentic and salutary *conservative* politics.

It is at this point that a major dispute arose between Jaffa and Berns: How far can the Declaration serve as a political guide, given its susceptibility to misuse by radical egalitarians who deny the very principle of limited constitutional government? Doesn’t the fact that human beings are naturally *unequal* in all sorts of ways make the Declaration’s opening a recipe for an endless battle to overcome or erase their inequalities, suppressing liberty in the process?

The misuse of the equality doctrine, especially as filtered through the Fourteenth Amendment’s equal-protection clause and the “substantive” reading of its due-process guarantee by the Warren court, led to a major change in Berns’s treatment of the relation between the Declaration and Constitution. While always maintaining that the Constitution must be understood as intended to achieve the purposes specified in the Declaration, Berns came to deny that it was *judges’* task to apply natural-rights principles to congressional or presidential acts. Given the grandiose ambitions of modern judges to remake our constitutional order on the basis of idiosyncratic intuitions, Berns moved to a “textualist” position: read the Constitution as it is, not as you would wish it to be. By the 1990s, Hayward notes, Berns published an essay titled “The Illegitimacy of Appeals to Natural Law in Constitutional Interpretation.”

Here was the substantive ground of Jaffa’s quarrel with Berns: “a strict textual originalism,” in Jaffa’s view, “is indistinguishable

from positivism.” To support Jaffa’s claim, Hayward quotes an extreme statement by Chief Justice Rehnquist, according to which the only “moral claim” that laws have upon us is “the fact of their enactment . . . and not any independent virtue they may have in any particular citizen’s own scale of values.” Rehnquist followed this up by citing the celebrated attack on natural law by Oliver Wendell Holmes, Berns’s lifelong *bête noire*. In response, Jaffa denied that positivism could ever be rendered consistent with the intentions of the framers of the Declaration and Constitution. Though Rehnquist correctly argued on behalf of judicial deference to legislative *interpretations* of the Constitution and against such judicial monstrosities as gay marriage, Jaffa showed that his textualist position lacked philosophical grounding.

But what was the alternative? Jaffa, who didn’t specialize in the study of constitutional law, never marked out a clear path between the Scylla of textualism and the Charybdis of judicial activism gone wild. Hayward’s own proposal is eminently sound: rather than “regard the Constitution as the near-exclusive property of lawyers,” citizens themselves should “contest” its meaning as Lincoln encouraged us to do. To contest the Constitution’s meaning of course does not mean refusing to respect it or to comply with Supreme Court interpretations of it as they apply in specific cases. It is rather to recognize that, as citizens of a self-governing republic, we have both the right and the duty to examine and challenge judicial interpretations that appear to violate the text—and to exert pressure through the regular political process to have such misinterpretations corrected.

Space considerations rule out discussing Jaffa’s involvement in the Goldwater campaign, including his authorship of the quite un-Lincolnian assertion that “extremism in the defense of liberty is no vice.” I must also

forego extensive analysis of Hayward’s fine discussion of Jaffa’s critique of the modern administrative state. The core of that critique, with which Berns agreed, was the observation that expansive governmental regulation in our time is increasingly guided less by economic than by “moral” considerations—i.e., endeavoring to overcome the bigotry of us deplorables in flyover country. Also worthy of mention is Hayward’s observation that “Strauss might not have fully accepted Jaffa’s understanding of the American solution [in *New Birth*] to the problem of religious conflict,” according to which the Founders somehow managed to reconcile Lockean liberal philosophy with an authentic, full-blooded Christianity. In contrast, Berns concluded “that the founders were nominal Christians at best,” and that “the very idea of natural rights is incompatible with Christian doctrine.” In this regard, Hayward remarks that “Berns was not alone in wondering whether Jaffa’s project” in his later years was to create an edifying “myth” of American superiority that blurred the critical *tensions* between reason and revelation, and between classical and modern political philosophy, that Strauss had articulated.

*Patriotism Is Not Enough* is a fine book that should be of great interest to thoughtful conservatives, liberals, and everyone in between. It nonetheless suffers from one major flaw of omission. The quarrel between Jaffa and Berns, along with numerous other distinguished Straussians, didn’t originate in issues of constitutional interpretation or jurisprudence. It began, as I learned from bystanders to the affair, with Jaffa’s outrage at his colleague and erstwhile friend Martin Diamond over the latter’s divorce. Finding the divorce morally intolerable, Jaffa set out to turn his personal quarrel into an intellectual one, denouncing Diamond as an unfaithful interpreter of the Founding because he gave a lecture celebrating the moderation of the American revolutionaries in contrast to their

French counterparts—even though Jaffa had said essentially *the same thing* only a few years earlier.

Having launched his crusade against Diamond, Jaffa proceeded to issue public diatribes against formerly mutual friends who came to Diamond's defense, including Berns and Irving Kristol. Under Jaffa's influence, the Claremont Institute, a mainstay of intellectual conservatism, was launched. But Jaffa continued to display a kind of fanaticism in demanding that others hew to his beliefs, generating the split between so-called East Coast and West Coast Straussians (the geographic basis of which is actually quite fuzzy). Probably the lowest he sank was to title a critique of his onetime collaborator Allan Bloom "Sodomy in the Academy."

While I respect Hayward's reticence in publicizing these facts about his teacher, I am under no such constraints. My regrets about Jaffa's personal behavior do not at all reduce my high admiration for his scholarship on Lincoln, Shakespeare, and Aristotle, or for his inspirational teaching. Let us be thankful that after decades of lamentable

polemics, Jaffa lived to produce the second, brilliant Lincoln book that he had promised more than forty years earlier.

As Hayward's account demonstrates, with the Jaffa-Berns quarrel now past, their intellectual legacy remains to guide us at a time when appreciation of the Constitution's text is in decline in favor of a so-called living Constitution that allows judges to make it up as they go along, and patriotism itself is disparaged by such prominent philosophical scholars as Martha Nussbaum in favor of something like global government. Those who study Jaffa's and Berns's numerous outstanding books will come to appreciate that the Founders' legacy, including its reinterpretation by Lincoln, offers much sounder guidance for the securing of liberty than does the Progressive movement, which has increasingly come to dominate both our political thinking and our politics, notably in the form of the ever-expanding administrative state.

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## St. Joseph the Worker

Steven Knepper

The carpenter knew well the harsher shapes  
That rough-cut wood and iron nail could take.  
The axe was often in his calloused grasp,  
Though now he held the narrow, rounded rasp.  
He worked it twice around the stubborn socket

Then slipped it back inside his apron pocket,  
So that the mortise might receive a peg,  
So that the table might receive its leg.  
The child observed the craftsman's patient art,  
Saw form emerging from his father's heart.