DOWNLOAD PDF ON THE NATURE OF CIVIL AND RELIGIOUS LIBERTY, BY H. V. JAFFA.

Chapter 1 : Natural Rights | blog.quintoapp.com

Harry V. Jaffa argues that America is very close to the best regime possible in practice, given the nature of the modern world. The bonding of religious and civil liberty we enjoy in America would have been impossible in the ancient world.

History[edit] The idea that certain rights are natural or inalienable also has a history dating back at least to the Stoics of late Antiquity and Catholic law of the early Middle Ages , and descending through the Protestant Reformation and the Age of Enlightenment to today. For example, Immanuel Kant claimed to derive natural rights through reason alone. The United States Declaration of Independence, meanwhile, is based upon the " self-evident " truth that "all men are â€¦ endowed by their Creator with certain unalienable Rights". Hart argued that if there are any rights at all, there must be the right to liberty, for all the others would depend upon this. The Zoroastrian religion taught Iranians that citizens have an inalienable right to enlightened leadership and that the duty of subjects is not simply to obey wise kings but also to rise up against those who are wicked. Leaders are seen as representative of God on earth, but they deserve allegiance only as long as they have farr, a kind of divine blessing that they must earn by moral behavior. The Stoics held that no one was a slave by nature; slavery was an external condition juxtaposed to the internal freedom of the soul sui juris. Seneca the Younger wrote: As the historian A. We think that this cannot be better exemplified than with regard to the theory of the equality of human nature. McIlwain likewise observes that "the idea of the equality of men is the profoundest contribution of the Stoics to political thought" and that "its greatest influence is in the changed conception of law that in part resulted from it. Furthermore, every man is responsible for his own faith, and he must see it for himself that he believes rightly. As little as another can go to hell or heaven for me, so little can he believe or disbelieve for me; and as little as he can open or shut heaven or hell for me, so little can he drive me to faith or unbelief. Preservation of the natural rights to life, liberty, and property was claimed as justification for the rebellion of the American colonies. As George Mason stated in his draft for the Virginia Declaration of Rights , "all men are born equally free," and hold "certain inherent natural rights, of which they cannot, by any compact, deprive or divest their posterity. The distinction between alienable and unalienable rights was introduced by Francis Hutcheson. Unalienable Rights are essential Limitations in all Governments. One could not in fact give up the capacity for private judgment e. The right of private judgment is therefore unalienable. Like Hutcheson, Hegel based the theory of inalienable rights on the de facto inalienability of those aspects of personhood that distinguish persons from things. A thing, like a piece of property, can in fact be transferred from one person to another. According to Hegel, the same would not apply to those aspects that make one a person: The right to what is in essence inalienable is imprescriptible, since the act whereby I take possession of my personality, of my substantive essence, and make myself a responsible being, capable of possessing rights and with a moral and religious life, takes away from these characteristics of mine just that externality which alone made them capable of passing into the possession of someone else. When I have thus annulled their externality, I cannot lose them through lapse of time or from any other reason drawn from my prior consent or willingness to alienate them. Such rights were thought to be natural rights, independent of positive law. Some social contract theorists reasoned, however, that in the natural state only the strongest could benefit from their rights. Thus, people form an implicit social contract , ceding their natural rights to the authority to protect the people from abuse, and living henceforth under the legal rights of that authority. Many historical apologies for slavery and illiberal government were based on explicit or implicit voluntary contracts to alienate any "natural rights" to freedom and self-determination. Any contract that tried to legally alienate such a right would be inherently invalid. Similarly, the argument was used by the democratic movement to argue against any explicit or implied social contracts of subjection pactum subjectionis by which a people would supposedly alienate their right of self-government to a sovereign as, for example, in Leviathan by Thomas Hobbes. According to Ernst Cassirer , There is, at least, one right that cannot be ceded or abandoned: They charged the great logician [Hobbes] with a contradiction in terms. If a man could give up his personality

he would cease being a moral being. For by such an act of renunciation he would give up that very character which constitutes his nature and essence: Neither can any state acquire such an authority over other states in virtue of any compacts or cessions. This is a case in which compacts are not binding. Civil liberty is, in this respect, on the same footing with religious liberty. As no people can lawfully surrender their religious liberty by giving up their right of judging for themselves in religion, or by allowing any human beings to prescribe to them what faith they shall embrace, or what mode of worship they shall practise, so neither can any civil societies lawfully surrender their civil liberty by giving up to any extraneous jurisdiction their power of legislating for themselves and disposing their property. Then it turned out to make considerable difference whether one said slavery was wrong because every man has a natural right to the possession of his own body, or because every man has a natural right freely to determine his own destiny. The first kind of right was alienable: But the second kind of right, what Price called "that power of self-determination which all agents, as such, possess," was inalienable as long man remained man. We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights In the 19th century, the movement to abolish slavery seized this passage as a statement of constitutional principle, although the U. As a lawyer, future Chief Justice Salmon P. The law of the Creator, which invests every human being with an inalienable title to freedom, cannot be repealed by any interior law which asserts that man is property. The concept of inalienable rights was criticized by Jeremy Bentham and Edmund Burke as groundless. Bentham and Burke, writing in 18th century Britain, claimed that rights arise from the actions of government, or evolve from tradition, and that neither of these can provide anything inalienable. Presaging the shift in thinking in the 19th century, Bentham famously dismissed the idea of natural rights as "nonsense on stilts". In The Social Contract , Jean-Jacques Rousseau claims that the existence of inalienable rights is unnecessary for the existence of a constitution or a set of laws and rights. One criticism of natural rights theory is that one cannot draw norms from facts. Moore , for example, said that ethical naturalism falls prey to the naturalistic fallacy. John Finnis , for example, contends that natural law and natural rights are derived from self-evident principles, not from speculative principles or from facts. Fourth president of the United States James Madison , while representing Virginia in the House of Representatives, believed that there are rights, such as trial by jury , that are social rights , arising neither from natural law nor from positive law which are the basis of natural and legal rights respectively but from the social contract from which a government derives its authority.

Chapter 2 : School Prayer Made Easy | Ashbrook

We the people of the State of Arkansas, grateful to Almighty God for our civil and religious liberty, and desiring to perpetuate its blessings We the people of the State of California, grateful to Almighty God for our freedom, in order to secure and perpetuate its blessings, do establish this Constitution.

Many Christians, while they cherish religious liberty, seem to believe that property rights, and the commerce that arises from the establishment of property rights, are somehow un-Christian. At the same time, a lot of free marketers seem to think that all we need are property rights and the rest will take care of itself. Neither of these views is correct, and I will explain why with reference to both James Madison and Winston Churchill. Pope Francis is one who sometimes seems to be an example of the Christian who reads the New Testament as pointing in the direction of socialism. Commerce appears, in some of his writings and speeches, to be a grubby business purely based on self-interestâ€”maybe even on exploitation, the opposite of charity. This reading of the New Testamentâ€”which I think flawed, by the wayâ€”is why Karl Marx, although he was famously an atheist and militantly opposed to Christianity, praised Christianity in one respect: In writing my book on Winston Churchill, I spent a number of months reading about the founding of the Labour Party in Britainâ€”Churchill detested the Labour Party from the beginning, so I was interested in its originâ€”and I found that Christians cooperated in its founding, and thus in the founding of British socialism. There were two strains of Christianity involved, one of them sounder than the other I think. The second strainâ€”one that is much less sound in exegetical termsâ€”held that since Jesus came down to earth, our task as Christians is to build a heaven on earth. Lots of Quakers in particular seem to have thought that. Although many socialists were atheists, many Christians took up with them for either or both of these reasons. Today in America we can see as well that at the heart of the leftward movement in our government is a claim against property. The claim goes this way: Many well-meaning Christians think this way. On the other side, recognizing that property is at the heart of the political argument we are having these days, are those who say that all that is needed is to protect property rights. Get money right and get property right, these people think, and leave it at thatâ€”leave morality and religion out of the political equation. But that way of thinking too is foolish. The most formidable enemies of property rights are formidable precisely because they know better than to separate the issue of property rights from the issue of other freedoms, including freedom of conscience and religious liberty. They know better because they see that human beings are an odd integrity of soul and body. Marx is clear-sighted about this. He understands that if you like the way the human being is organizedâ€”if you like this integrityâ€”then you are going to have to protect it all. And if you do not like it, you are going to have to uproot it all. They claimed that they intended only to destroy property rightsâ€”that socialism is not about getting rid of the family or religion. But they were not entirely convincing. There are obvious parallels in our own time and country. But money is not all that he and his allies are interested in, is it? The President has altered his position about the nature of marriage, and now the enforcement of a new understanding of gender identity is pressed upon us through powerful means, both legal and social. We at Hillsdale College, servants of an old mission that requires promotion of the Christian faith, wonder if it will remain legal for us to separate our student body into dormitories for men and women. Will we be compelled to join the swelling chorus that denies any connection between nature and sex, and that conjures up countless new so-called genders and writes protections for these so-called genders into law? Did you follow the recent campaign over the measure that sought to do this in Houston? Are you following the case of the Little Sisters of the Poor versus Obamacare? It is not inconceivable that what we teach at Hillsdale College, and what we have taught for over years, might someday soon be declared illegal. So it is not just a fight about property, is it?

Chapter 3 : Property Rights and Religious Liberty

On the Nature of Civil and Religious Liberty: Reflections on the Centennial of the Gettysburg Address In Melvin Laird, ed., The Conservative Papers (New York: Doubleday,).

Natural rights plural are to be carefully distinguished from that natural right singular which is a central conception of classical, premodern political philosophy. Both the premodern and modern teachings result in judgments that some things are naturally right, or right according to nature, and that these things are intrinsically right, or right independently of opinion. Thus Aristotle says in Politics a that no one would call a man happy who was completely lacking in courage, temperance, justice, or wisdom. A man who was easily frightened, unable to restrain any impulse toward food or drink, willing to ruin his friends for a trifle, and generally senseless could not possibly lead a good life. Even though chance may occasionally prevent good actions from having their normal consequences, so that sometimes cowards fare better than brave men, courage is still objectively better than cowardice. The virtues and actions that contribute to the good life, and the activities intrinsic to the good life, are naturally right. According to the teaching developed primarily by Hobbes and Locke, there are many natural rights , but all of them are inferences from one original right, the right that each man has to preserve his life. All other natural rights, like the right to liberty and the right to property, are necessary inferences from the right of self-preservation, or are conceived as implicit in the exercise of that primary right. Similarly, the natural law founded upon natural rights consists of deductions made from the primary right and its implications. The sum of these deductions is the state of civil society. The doctrine of natural rights teaches primarily, then, that all obligation is derived from the right which every man has to preserve his own life. Conversely, it teaches that no man can be bound to regard as a duty whatever he regards as destructive to the security of his life. From this point of view, what is intrinsically right is no longer what is required by, or what partakes of, the good life; rather, it is what is subjectively regarded by the individual as necessary to his security. The individual, abstractly considered, becomes the subject of rights, apart from any particular qualities he may have. The premodern doctrine of natural right, holding that men are obligated by what is required for their perfection or happiness, regarded the less intelligent and less virtuous as being naturally obligated to obey the more intelligent and more virtuous. This natural obligation was independent of the many prudent compromises that various circumstances might dictateâ€”some of them very democratic compromises â€”by which the consent and loyalty of the less excellent might be enlisted in the service of a regime. But classical natural right was inherently aristocratic in its tendency. The modern doctrine of natural rights makes every individual equally the source of legitimate authority. Moreover, it makes the people as a whole the judge of the legitimacy of the exercise of this authority. Thus, although the doctrine of natural rights may sanction other forms of governmentâ€”including limited monarchy, as the Declaration of Independence indicatesâ€”it is inherently democratic in its tendency. Classical natural right is politically comprehensive, since there is virtually no aspect of human life which does not bear upon its quality. The parallel modern maxim, exhibiting the far more limited scope of the modern state, holds that what the law does not forbid, it permits. State and polis The state erected upon the doctrine of natural rights tends in this way to be liberal or permissive. For the doctrine gives rise to the notion that there is a private sphere within which the activities of the individual, or at least those of his activities which do not affect the security of the equal rights of his fellow citizens, should be immune to public inquiry or public control. The activities of the state are thus directed toward providing security for life and for libertyâ€”which are among the conditions of happinessâ€”but not toward providing happiness itself. Each man is to be left free to seek this according to his own private opinion of what happiness is. It is for this reason that Jefferson names, not happiness, but the pursuit of happiness, as being among those rights for the sake of which man organizes civil society. Nothing better indicates the difference between the earlier and later doctrines than their attitudes toward religion. From the point of view of classical natural right, religion is one of the most important means by which men are

directed toward virtue, and hence toward temporal no less than toward eternal felicity. Accordingly, religious institutions are among the most important political institutions. But it does me no injury for my neighbor to say there are twenty gods, or no god. It neither picks my pocket nor breaks my leg. It is the comprehensive form of human association, and its purposes ascend from the necessary conditions of human existenceâ€”the provision of material necessities and of security from all forms of violenceâ€”to the sufficient conditions. The latter include the formation of good character in the citizens, education in the liberal arts , and participation in politics and philosophy. These are the characteristic pursuits of gentlemen, and rule by gentlemen is the characteristic solution to the political problem, according to classical natural right. The polis is a partnership in justice, but justice is essentially inferior to friendship. Friendship, writes Aristotle, seems to hold political communities together more than does justice, and legislators seem to care for it more than for justice. For when men are friends, they have no need of justice, but when they are just, they still have need of friends. This implies, among other things, that the polis, as distinct from the modern state, is a very small society. Its size is such that there is virtually no one among the citizens who cannot be either a friend, or a friend of a friend, of every other citizen. For this reason the ultimate sanctions for justice are not the penalties that can be exacted in the law courts but ostracism, formal or informal, from that fellowship in which alone the good citizen feels he can lead the good life. The modern state, erected upon the doctrine of natural rights, is in principle a large society, if not a mass society. The natural limits upon the size of the polis, within which classical natural right has its proper home, are determined by human ability to participate in a common good, by face-to-face relationships. The modern state, however, is founded upon the notion of a social contract and is held together by the power of a sovereign authority to enforce the terms and consequences of that contract. Since the more powerful the sovereign is, the better he is able to perform his functions, and since increase in the size of the state generally adds to the power of the sovereign, the state thus has an inherent tendency to an almost indefinite expansion. In the United States of America, however, the governing officials are not the sovereign authority. The people of the United States is the sovereign, even though the people only acts through representatives. It is true that the logic of the notion of sovereignty would permit the people of the United States to transfer its authority to a hereditary monarch. Should it do so, however, the monarch would still represent the people, although the form of the representation would no longer be democratic or republican. The modern concept of sovereignty can be deduced quite strictly from the proposition that all men are created equal. This proposition does not mean, as we have noted, that men are equal in virtue or intelligence, but that they are equal in certain rights. Each man has a natural right to preserve his life, and no man has a natural obligation to defer to any other man, in deciding what does, and what does not, tend to his own preservation. Government, accordingly, does not exist by nature. The state of nature is the state of men without government. The ground of sovereignty is the complete right that every man has to everything in the state of nature, a right which is unlimited because, every man being equal in authority to every other man, there is no one who can prescribe any limits to anyone else. There are limits in the state of nature to what a man may rightly intend to do, since he may not naturally or reasonably intend his own destruction. But these are limits implicit in the inclination to self-preservation, not limits upon what may be done from that inclination. For reasons sufficiently evident, life in the state of nature, as John Locke puts it, is full of inconveniences or, in the more pungent language of Thomas Hobbes , it is nasty, brutish, and short. The remedy for the state of nature is the state of civil society, and we must consider carefully how men as equal as those in the state of nature can thus transform their condition. They can do so by consenting or agreeing, each with the other, that they will surrender the exercise of their unlimited right to be sole judges of what tends to their own preservation. This surrender must be equal by each, and it must be complete. No one in civil society can continue to exercise any part of the right he had in the state of nature to be his own master. This agreement, which is the social contract , is an agreement that is made by everyone with everyone. It transforms many isolated individuals into one people, a corporate entity. The agreement is unanimous, for the simple reason that whoever does not agree is not part of the people. Whoever stands outside the agreement is still in a state of nature with respect to the

people created by the agreement. The consequence of the social contract is that henceforward the whole power of the incorporate people shall defend the life of each one of them, instead of each one having to defend himself alone. In order for the whole to act thus, there must be a part which can represent the whole and which can decide for and command the whole. But what part is this? Unanimity is impossible except with respect to the contract itself. And this, we have seen, is an agreement to let a part stand for the whole. The rule of a minority is inadmissible, for this would imply some reservation by the ruling minority of some of the right each possessed in the state of nature but which all are supposed equally to surrender by entering civil society. Any such reservation would void their membership in the civil society. Hence the rule of the majority is the only rule which is not inconsistent with the original natural equality of all. Thus the natural right each individual possessed alone, the unlimited right to everything he deemed necessary to his preservation, is transformed into a legal or conventional right possessed by the whole people acting by the majority. Many forms of government may be legitimate, according to the doctrine of natural rights, yet simple majoritarianism is the only form which is necessarily legitimate. Moreover, while legal or conventional sovereignty may devolve first to a majority, then to a minority, the natural right to life and liberty remains inalienable in the bosoms of individuals, whose consent to be governed is always conditional. Nature and convention We have seen that sovereignty, as a construction from the unlimited right of every individual in the state of nature, is itself inherently unlimited. The government of the United States, however, is a limited government, prohibited from doing many things, such as passing ex post facto laws and bills of attainder, granting patents of nobility, or establishing a state church. Yet these limits are themselves impositions by the sovereign people of the United States. The people have laid down these boundaries to government, and the people may take them away. From the point of view of the concept of sovereignty, the sovereign may do anything not naturally impossible. But the absoluteness of sovereign power is legal and hypothetical, not natural. For example, the American people may establish a state church, but they ought not to. They ought not to do anything inconsistent with their intention in forming a civil society, which intention was to overcome the discord of wills in the state of nature. Religious disestablishment is now plainly more conducive to that end than is establishment. This distinction reproduces that of the state of nature, in which nothing the individual does can be unjust, because there is no authority which can prescribe to him. Yet he ought not to act in a manner contrary to his self-preservation; for example, he ought not to be unwilling to leave the state of nature when others are willing to join with him in the agreement which produces civil society. Thus, also, the American people may do anything they decide to do, because there is no sovereign to prescribe to them. Yet they ought not to do anything harmful, or omit anything beneficial, to their self-preservation. The incorporation of naturally discrete individuals into one people creates an artificial person. For the many to regard the decision of a part as if it were a decision of a whole involves a second element of artifice or fiction: The doctrine of natural rights logically requires employment of this twofold fiction. And the polarity of this dual fiction is anchored in a twofold nature, a nature constituted by the undeniable concrete reality of the discrete individual, at the one end, and by the equally undeniable abstract reality of the human race, as a species, at the other. For this reason, the logic which leads individuals out of the state of nature suggests that sovereignsâ€”who remain in the state of nature with respect to each otherâ€”can also emerge from this state by forming a world state. Thus there is also an inherent tendency in the doctrine of natural rights toward the world state, or at least toward a world society inhabited by a comparatively few pacific sovereigns. We may observe that if the whole human race were to become incorporated into one people, then the fiction whereby the many are declared to be one would in one sense coincide with a natural reality. For the fictitious one people would then coincide with the abstract one human race. However, we may also observe that, were it to do so, the fiction that a part represented a whole would thereby become that much more fictitious.

Chapter 4 : The American Founding as the Best Regime - Harry V. Jaffa

An Essay on the First Principles of Government: And on the Nature of Political, Civil, and Religious Liberty - Kindle edition by Joseph Priestley. Download it once and read it on your Kindle device, PC, phones or tablets.

He traced its roots in Enlightenment philosophy to Max Weber , a thinker whom Strauss described as a "serious and noble mind. A political scientist examining politics with a value-free scientific eye, for Strauss, was self-deluded. Positivism , the heir to both Auguste Comte and Max Weber in the quest to make purportedly value-free judgments, failed to justify its own existence, which would require a value judgment. Through his writings, Strauss constantly raised the question of how, and to what extent, freedom and excellence can coexist. Strauss refused to make do with any simplistic or one-sided resolutions of the Socratic question: What is the good for the city and man? But dominion can be established, that is, men can be unified only in a unity againstâ€”against other men. Every association of men is necessarily a separation from other men For Strauss, Schmitt and his return to Thomas Hobbes helpfully clarified the nature of our political existence and our modern self-understanding. Strauss instead advocated a return to a broader classical understanding of human nature and a tentative return to political philosophy, in the tradition of the ancient philosophers. They had first met as students in Berlin. The two thinkers shared a boundless philosophical respect for each other. He argued that philosophers should have an active role in shaping political events. In On Tyranny, he wrote that these ideologies , both descendants of Enlightenment thought, tried to destroy all traditions, history, ethics, and moral standards and replace them by force under which nature and mankind are subjugated and conquered. The resultant study led him to advocate a tentative return to classical political philosophy as a starting point for judging political action. In fact, he was consistently suspicious of anything claiming to be a solution to an old political or philosophical problem. He spoke of the danger in trying finally to resolve the debate between rationalism and traditionalism in politics. He agreed with a letter of response to his request of Eric Voegelin to look into the issue. Popper is philosophically so uncultured, so fully a primitive ideological brawler, that he is not able even approximately to reproduce correctly the contents of one page of Plato. Reading is of no use to him; he is too lacking in knowledge to understand what the author says. The contrast between Ancients and Moderns was understood to be related to the unresolvable tension between Reason and Revelation. The Socratics, reacting to the first Greek philosophers, brought philosophy back to earth, and hence back to the marketplace, making it more political. Both were admirers of Strauss and would continue to be throughout their lives. He wrote several essays pertaining to its controversies but left these activities behind by his early twenties. He taught at the Hebrew University of Jerusalem during the â€”55 academic year. In his letter to a National Review editor, Strauss asked why Israel had been called a racist state by one of their writers. He argued that the author did not provide enough proof for his argument. He ended his essay with the following statement: But I can never forget what it achieved as a moral force in an era of complete dissolution. It helped to stem the tide of "progressive" leveling of venerable, ancestral differences; it fulfilled a conservative function. Religious belief[edit] Although Strauss espoused the utility of religious belief, there is some question about his views on its truth. He especially disapproved of contemporary dogmatic disbelief, which he considered intemperate and irrational and felt that one should either be "the philosopher open to the challenge of theology or the theologian open to the challenge of philosophy. Strauss was not himself an orthodox believer, neither was he a convinced atheist. Since whether or not to accept a purported divine revelation is itself one of the "permanent" questions, orthodoxy must always remain an option equally as defensible as unbelief. Dannhauser on Leo Strauss and Atheism," an article published in Interpretation: A Journal of Political Philosophy. As a philosopher, Strauss would be interested in knowing the nature of divinity, instead of trying to dispute the very being of divinity. But Strauss did not remain "neutral" to the question about the "quid" of divinity. Already in his Natural Right and History, he defended a Socratic Platonic, Ciceronian, Aristotelian reading of divinity, distinguishing it from a materialistic, conventionalist,

Epicurean reading. Atheism, whether convinced overt or unconvinced tacit , is integral to the conventionalist reading of civil authority, and thereby of religion in its originally civil valence, a reading against which Strauss argues throughout his volume. Drury who profess that Strauss approached religion as an instrument devoid of inherent purpose or meaning. Shadia Drury , in Leo Strauss and the American Right , claimed that Strauss inculcated an elitist strain in American political leaders linked to imperialist militarism , neoconservatism and Christian fundamentalism. According to Claes G. Strauss does not consider the possibility that real universality becomes known to human beings in concretized, particular form. Strauss and the Straussians have paradoxically taught philosophically unsuspecting American conservatives, not least Roman Catholic intellectuals, to reject tradition in favor of ahistorical theorizing, a bias that flies in the face of the central Christian notion of the Incarnation, which represents a synthesis of the universal and the historical. According to Ryn, the propagation of a purely abstract idea of universality has contributed to the neoconservative advocacy of allegedly universal American principles, which neoconservatives see as justification for American intervention around the worldâ€”bringing the blessings of the "West" to the benighted "rest". Lilla summarizes Strauss as follows: Philosophy must always be aware of the dangers of tyranny, as a threat to both political decency and the philosophical life. It must understand enough about politics to defend its own autonomy, without falling into the error of thinking that philosophy can shape the political world according to its own lights. Bush administration, such as "unrealistic hopes for the spread of liberal democracy through military conquest," Professor Nathan Tarcov, director of the Leo Strauss Center at the University of Chicago, in an article published in The American Interest, asserts that Strauss as a political philosopher was essentially non-political. Had academia leaned to the right, he would have questioned it, tooâ€”and on certain occasions did question the tenets of the right. The approach "resembles in important ways the old New Criticism in literary studies. Mansfield describes the school as "open to the whole of philosophy" and without any definite doctrines that one has to believe to belong to it.

Chapter 5 : John Locke Bibliography--Chapter 7, Politics --

Summary from the Publisher: This is the first of four books by Harry V. Jaffa reprinted by the Claremont Institute in honor of his 80th birthday. This book was originally published by Oxford University Press in

Jaffa July 4, In the great journal of things happening under the sun, we, the American people, find our account running, under date of the nineteenth century of the Christian era. We find ourselves in the peaceful possession, of the fairest portion of the earth, as regards extent of territory, fertility of soil, and salubrity of climate. We find ourselves under the government of a system of political institutions, conducing more essentially to the ends of civil and religious liberty, than any of which the history of former times tell us. Alone among the ends of the Constitution, to secure liberty is called a securing of "blessings. It is a good whose possessionâ€”by the common understanding of mankindâ€”belongs properly only to those who deserve it. We remember that the final paragraph of the Declaration of Independence appeals to "the Supreme Judge of the World for the rectitude of our intentions. It is because of this assurance of their rectitude that this good people, and their representatives, placed "a firm reliance on the protection of Divine Providence. And so it is that men pray for these things. Yet the sufferings of the innocent and the flourishing of the wickedâ€”especially the great tyrantsâ€”teach us that to be blessed is not the same thing as to be in the enjoyment of worldly goods, of what Aristotle calls external goods. It is an element of the natural theology of mankindâ€”that is partly implicit and partly explicit in the Declaration of Independenceâ€”that the compensations, both of evil and of good, are not altogether those visible in the natural order. Hence Aristotle says that what men should pray for is that these external goods be good for them. When men are poor, they seem to wish only for wealth. When they are ill, for health. When they are enslaved, they long only for freedom. This is altogether understandable. Nevertheless, reflection teaches us that the possession of health, wealth, and freedom are not the ultimate measure of human well-being. We know that there have been human beings who, being in the full possession of health, wealth, and freedom, have yet committed suicide. Health, wealth, and freedom must be combined with something else before they become ingredients of the human good, before they become blessings, properly so called. Aristotle says that no man, even with all the other goods for which men pray, would wish to live without friends. Andâ€”although they are usually surrounded by flatterersâ€”tyrants do not have friends, certainly not the kind of friends who make life worth living. The Virginia Bill of Rights of June 12, , affirmed a fundamental principle of the Revolution and of the Foundingâ€”providing by anticipation a gloss upon the words of the Preambleâ€”when it declared that: The idea of libertyâ€”or the liberty which is a blessingâ€”being an emancipation of the passions from moral restraint had no place in the constitutional doctrine of the novus ordo seclorum. The liberty which is a blessing must be good for the one who possesses it. It must therefore be a good in the sight of God, who is the source of blessings. Such a good must point to felicity, whether in this world or the next, as its consummation. By calling the advantages of liberty "blessings," the Constitution, which in certain respects makes perhaps the most radical break in all human history with all that has gone before it, nonetheless, in its understanding of the connection between happiness and virtue, aligns itself decisively with traditional moral philosophy and moral theology. By grounding the regime in the doctrine of human equality, proclaimed in the Declaration of Independence, it has, as Lincoln said, cleared paths for all, given hope to all, and, by consequence, enterprise and industry to all. As the Virginia Bill of Rights shows, the Framers never conceived the blessings of liberty in nonmoral terms. They never imagined it to encompass the exhibitionism of lesbians, sodomites, abortionists, drug addicts, and pornographers. The people are the source of the authority of the Constitutionâ€”of all lawful authority. And mobs give rise not to free government, but to despotism. The first amendment, in a single sentenceâ€”divided, however, by a semicolonâ€”joins together its civil and religious guarantees. Although it is customary to speak of "civil" before "religious," the first amendment actually reverses this order. This is not accidental. Without the establishment of religious Libertyâ€”without the

removal from the political process of sectarian religious questionsâ€”a regime combining majority rule with minority rights is not a feasible enterprise. The problem of democratic constitutionalism was expressed succinctly by Jefferson in his inaugural address. All too will bear in mind this sacred principle, that though the will of the majority is in all cases to prevail, that will to be rightful must be reasonable; that the minority possess their equal rights, which equal law must protect, and to violate would be oppression. It is clear from the foregoing that "rightfulness" and "reasonableness," being restraints upon the will of the majority, are not themselves mere expressions of will. Here Jefferson is not only saying what the Constitution is, but why it is what it is. In truth, the "what" of the Constitution is inseparable from its "why," and the attempt to understand the former without the latter isâ€”all but the simplest casesâ€”vain. To appeal to the conception of "original intent" in interpreting the Constitutionâ€”as do Justices Rehnquist and Antonin Scalia and Judge Robert Borkâ€”while denying the ideas of natural justice which formed the "why" of the Constitution, is to go to the uttermost limit of self-contradiction. James Madison, in his essay on "Sovereignty," written near the end of his life, restated the theoretical arguments that had guided both him and Jefferson in their long political careers. The occasion, of course, was his bitter struggle against Nullificationâ€”the South Carolina doctrine whose principal author and exponent was John C. Legitimate political authority, according to Madison, always arises from an agreement "compact is the basis of all free government" made between men who are by natureâ€”or originallyâ€”equal, none having more authority over another than the other has over him. It is the primordial fact "that all men are created equal" which is the ground both of majority rule and of minority rights. Hence it is that Lincoln would call this proposition "an abstract truth, applicable to all men and all times," and why he would, at Gettysburg, rededicate the nation to it. Sovereignty, then, has its ground in the natural right to rule oneself that every human being possesses. Sovereignty in the political senseâ€”what we ordinarily call sovereigntyâ€”arises when men transfer their right to rule themselves to a civil society, which can do for them what they cannot do for themselves. Civil society, according to Madison, is constituted by the unanimous consent of its constituent members. But civil society is ruled by the majority. The majority is the surrogate for that unanimity which brought the polity into being, but which cannot be the continuing basis for the decisions required by governments if they are to answer the purposes for which they are instituted. That the will of the majority should prevail is a "sacred principle" because the authority of the majority is derived from those natural rights with which all men have been equally "endowed by their Creator. The majority must understand that it is acting on behalf of the people as a whole, and hence the minority no less than the majority. And the minority must look upon the majority as governing in the interests of all, however much it may disagree with the particular measures adopted by the majority. We all recognize this when we speak, for example, of the representative from our congressional district as "our" representative whether we voted for him or against him. And we all recognize that the President of the United States is equally the President of every citizen of the United States. Majority and minority are then essentially divided only by the questions of what means ought to be adopted, for the sake of the ends which are common to all. Hence the Declaration of Independence proclaims "that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish itâ€¦. The right to "alter or abolish" belongs to any majority faced with a will external to itselfâ€”as in the case of the King and Parliament of Great Britain. But it also belongs to any minority faced with a majority that ceases, as Jefferson says, to be "reasonable," and which passes laws which violate the "equal rights" of their fellow citizens. Madison, in his essay on "Sovereignty," defines the limits of the authority of the majority by reference to whatever might be done rightfully and by unanimity. The qualification of unanimity refers back to the original constitutive principle of the polity. Unanimous consent is, however, the necessary but not the sufficient condition of government that is nondespotic. The community of Jonestown apparently committed suicide by unanimous consent. Unanimity did not make that action reasonable, or even nondespoticâ€”surely not for the hundreds of children who were put to death by their consenting but deluded parents. Rightfulness implies moral understanding, that "rectitude" upon which the "good people" of the colonies relied in submitting their consciences to "the Supreme Judge of the world. For

the rights set forth in the second paragraph of the Declaration of Independence, the rights to "life, liberty, and the pursuit of happiness," are not unconditional justifications for idiosyncratic behavior. Slavery was, from the outset, no mere paradox in a land of freedom. It was a contradiction of every right to which the American people had themselves appealed when asserting their own right to nondespotic government. Tocqueville praised the effect of disestablishment in America and called religion the first of our political institutions precisely because of it. By removing theological differences from the political arena, men could worship God freely according to the dictates of their consciences. But however differently they might conceive of the divine attributes, or however different the forms of worship which in their eyes were pleasing to God, there was a common understanding of morality underlyingâ€"or transcendingâ€"religious differences. This common understanding was strengthened by all the churches, just by the fact that it was not called into question by their theological differences. By strengthening this moral consensus, disestablishment promoted confidence and even friendship among the citizens. By doing so, it promoted a regime in which the rule of the majority might be consistent with the rights of the minority. But the practical achievement of such a regime was a hard one nonetheless. Without the doctrine of disestablishment and religious freedom it would have been impossible. The obstacle to Union that arose over slavery could never have been surmounted had not the bonds of Union been sowed in the idea of religious freedom, for the idea of religious freedom encompasses and promotes moral law independently of any particular dogmas of revealed religion. Equally important, it lays the foundation for the idea of limited government in its full extent, and not only with reference to the question of religion. Why this is so, we shall presently say. First, in attempting to define the nature of its limits, let us take note of the crucial tests in the early years of the Constitutionâ€"tests it could never have survived had not the doctrine of religious liberty placed the religious question outside its boundaries. To the best of my knowledge, this was the first time in human history that any such change in the offices of government had ever occurred on the basis of a free popular election. No such election happened in England until well into the nineteenth century. It was not until long after the American Revolution that the Kingâ€"who could not be constitutionally replaced by any electoral processâ€"ceased to be the executive head of government. Ministers were responsible to the Crown, not to the Parliament. The King secured his majorities in Parliament, not by calling elections, but by manipulating the patronage. That is what Alexander Hamilton had in mind when he said that without corruption the British Constitution was unworkable. And, of course, not until after could there be said to be anything like a popular election even for the House of Commons. During the s in France, in the course of the French Revolution, something like ministerial responsibility to the elected Assembly did occur, anticipating the future course of parliamentary democracy. Unfortunately, the special ceremony for outgoing ministers made it impossible for them to form a loyal opposition or to contest future elections. The election of in the United States was the the first time that the losers gave up their offices peacefully and the winners did not proscribe their defeated opponents by death, imprisonment, loss of property, exile, or even the loss of civil or political rights. Exactly what contested elections were to mean under the new Constitution was an unresolved question until The election of , while hotly contested, returned the party in power to office. The fact that the Constitution of called for each elector to cast two ballots for Presidentâ€"with the vice-presidency going to the runner-upâ€"showed that the Framers did not anticipate the kind of partisan contests that actually developed. When Jefferson and Burr received the same electoral vote in , the Constitution had to be amended so that electors henceforth distinguished their votes for President and Vice President. The Alien and Sedition Acts of revealed profound uncertainties as to what a regime of liberty meant in the face of fierce party contests for control of the government. It cannot be emphasized too strongly, however, that America was forging the principles of modern democracy for all humanity, and doing so with no precedents to guide her. The party contests of the s were the bitterest in American historyâ€"more so, even, than those that preceded the Civil War. In part, this was because the very idea of settling such deeply felt differences by free elections was an idea struggling to be born.

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The case was heard as if an order nisi were grated. The petition was granted, and the order nisi was made absolute. Bar Shilton â€" on behalf of the Petitioners Y. The question before the Court in this petition is: What considerations may a Rabbinical Court take into account when considering whether or not to grant a writ ne exeat republica? The Facts Petitioner 1 hereinafter: They have three minor children Petitioners 2, 3 and 4. Disputes arose between the Petitioner and the Respondent. The Petitioner filed a claim for child support and custody in the District Court on May 10, She also sued for divorce in the Rabbinical Court. In response, the Respondent filed suit for marital reconciliation with the Rabbinical Court Respondent 2. In the framework of the suit for marital reconciliation, the Respondent requested that the Tel Aviv-Jaffa Rabbinical Court issue a writ ne exeat republica to prevent the Petitioner from leaving Israel. The Rabbinical Court, in the presence of the Respondent alone, issued an order barring the Petitioner and her children from leaving the country. The Petitioner requested that the Rabbinical Court rescind the order. The request noted that the Petitioner and her eldest daughter Petitioner 2 wished to go abroad for two weeks. The vacation was planned long in advance and was "meant as a bat-mitzvah gift for the daughter". The two sons Petitioners 3 and 4 would remain in Israel. The Petitioner has an active business in Israel, and there is no concern that she might not return to Israel. The Respondent objected to this request. She amended her request to a new date August 14, , adding that she was also combining a business trip in her trip and that preventing her from leaving would inflict severe monetary damage. The relationship between the parties was described in the course of the hearing. The Petitioner emphasized the rift in their personal relationship. She stated that the purpose of the trip was an excursion as a gift to the daughter and business enquiries. At the end of the hearing on July 30, , the Rabbinical Court reached the following decision: An application for leave to appeal this decision was filed with the Supreme Rabbinical Court. The court was asked to schedule an urgent date for a hearing in order to allow the Petitioner to leave Israel on the date she requested, so that she and her daughter would be able to return to Israel in time for the beginning of the school year. The Supreme Rabbinical Court denied the application for leave to appeal on August 6, , ruling: Inasmuch as the Regional Court decided to schedule an additional session to continue the hearing, it is inappropriate to hear the appeal at this stage. The petition before us was filed against these Rabbinical Court decisions. It is repugnant to the provisions of Basic Law: Human Dignity and Liberty. This Basic Law establishes the right of every person to leave Israel. It was further argued that the Rabbinical Court lacked authority to prevent the daughter from leaving the country. In his response, the Respondent argues that he seeks to achieve marital reconciliation. The court acted within this framework and did not act ultra vires. The Petitioner must wait until the hearing in the Regional Rabbinical Court is exhausted. Upon the commencement of the hearing on August 13, , at the consent of the parties we treated the hearing as though an order nisi had been granted. We instructed that our reasons will be given separately. These are our reasons. The law establishes the jurisdiction of the rabbinical courts over matters concerning the personal status of Jews. The substantive law under to which the rabbinical courts rule on personal status matters is Jewish Law. The Rabbinical Courts also rule in accordance with the general substantive statutory and case-law law that applies to matters under their jurisdiction. The Rabbinical Courts Jurisdiction Law does not establish any rules of procedure for the rabbinical courts in matters that are in their jurisdiction. In the past, certain provisions in this regard were established in the Jewish Community Regulations. What, then, is the procedural regime that applies in the rabbinical courts? One might argue that the authority to prescribe procedural rules derives from the substantive law. Since the substantive law followed by the rabbinical courts is primarily Jewish law, therefore Jewish law should also be the source of the rabbinical courts authority to establish rules of procedure see: Wolfson [1] at p. Attorney General [2] at p. In my opinion, in the absence of statutory authorization in

this matter, the power to establish procedures lies with the rabbinical courts themselves. Justice Berenson elaborated on this in reference to the rabbinical courts, stating: Jerusalem Rabbinical Court [4] at p. Similarly, my colleague Justice D. The Druze courts, which were duly established and have been conducting their hearings for years, do not operate in a vacuum. Druze Court of Appeals [5] at p. Thus, the rabbinical courts have inherent jurisdiction to prescribe the procedures that they will follow. A review of these regulations reveals that their content reflects Jewish law see Shochetman, ibid. Haifa Magistrates Traffic Court [6] at p. This inherent jurisdiction derives from the rabbinical court like any other judicial instance being a judicial institution established by law, which is intended to rule upon disputes, and which is granted power that is inherent to the very performance of the duty and the need to conduct judicial proceedings. Beeri [7] at p. Attorney General [8] at p. They underlie "that minimal authority in matters of procedures, trial efficiency and justice that the court needs in order to perform its purpose: Machlev [9] at p. This power is broad. Indeed, due to the broad scope of this power, it has long been accepted that it should be exercised with great caution see: Piper [55] at p. This ancillary power is not unlimited. It is not broader than the express authority to prescribe procedures. By its nature, it operates within the boundaries of procedural law and relates to the matter of the proper management of the judicial proceeding and its proper control. Therefore, it must be exercised reasonably. Indeed, the judge, like any person exercising governmental authority, must act reasonably. I addressed this elsewhere, stating: A judge may not toss a coin. He may not consider any factor that he chooses. He must consider reasonably. We have here, as in administrative law, a margin of judicial reasonableness. There are a number of options within the margin among which a reasonable judge may choose. Awad [11] at p. What constitutes reasonable exercise of judicial authority? The answer is that reasonable exercise of judicial authority means its exercise in a manner that strikes a proper balance among the values, principles and interests that must be considered. Judicial discretion, like any governmental discretion, must be exercised in the framework of the law. A judge must not be arbitrary or discriminatory. He must consider his discretion reasonablyâ€¦ This requirement means, inter alia, that the judge must weigh all of the relevant considerations, juxtapose them, and strike a balance among them where there is friction. Thus, proper exercise of "inherent" judicial authority â€" like the exercise of explicit statutory procedural authority â€" means exercising the inherent authority in a manner that strikes a proper balance among the values, principles and interests that must be considered when exercising inherent authority. What are the values, principles and interests that must be considered when exercising inherent jurisdiction? It would appear that these values, principles and interests are not essentially different from those that apply when exercising statutory procedural jurisdiction. Naturally, these values, principles and interests, which determine the "environment" of the statutory or inherent procedural jurisdiction, change from case to case in accordance with the specific procedural issue at hand. However, a number of typical considerations can be identified as a common thread through the procedural process in general and the exercise of inherent jurisdiction in particular. Procedural justice is a central consideration. This consideration means, inter alia, perceiving the procedural process as intending to realize substantive law, based upon exposing the truth. Procedural justice requires observing the rules of natural justice, which treat of granting each party an opportunity to voice its arguments, prohibiting bias, and the obligation to state reasons. Rules regarding a fair hearing are also derived from procedural justice. The efficiency, simplicity and finality of proceedings can also be included in this framework. The aspiration for confidence, stability and certainty in procedural arrangements should also be included in the framework of these typical considerations. A typical set of values that must be considered in every procedure is that of human rights. Any procedural arrangement must treat the litigating parties equally. Israel Bar Association [15]. It must consider the right to strike and lockout see: It must ensure the freedom of movement that is guaranteed to every person, and in that framework, the right of every person to leave the country see:

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