

**UNMASKING THE ADMINISTRATIVE  
STATE: THE CRISIS OF AMERICAN POLITICS  
IN THE TWENTY-FIRST CENTURY**

(JOHN MARINI)

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Conservatives have long complained about the administrative state, the monster that swallowed America. Many complaints focus on the end result: how the administrative state is a tool of the Left, that accomplishes innumerable Left goals, all destructive. Other complaints, more technical, focus on how crucial elements of the American constitutional system, such as separation and enumeration of powers, have vanished, destroyed by the Blob-like growth and flailing tentacles of the administrative state. John Marini steps back even further, to show how the administrative state is utterly incompatible with the philosophical vision of America's founding, and is rather the fruit of poisonous modern philosophies, deadly to any society based on natural right and reason.

True, all such complaints have been made for a century, yet have had no effect whatsoever on limiting the administrative state, and are confined to a relatively narrow segment of intellectuals who collectively have, over that century, exercised less real power than a mid-level EPA bureaucrat does in any given week. And I find that when talking to any person left of center, he completely fails to understand any complaint about the administrative state. After all, from his perspective, the administrative state is a wonder, magically transmuting his political desires into reality, without the pesky need to convince dull voters, or to get laws passed through Congress, or to submit to any form of judicial review other than a rubber stamp. What these two realities strongly suggest is that talk is of limited value, and force is needed. But having a philosophical grounding can't hurt, and that Marini supplies in spades.

With the election of Donald Trump, who intermittently makes noises about the administrative state, and who briefly employed people dedicated to pruning it, the matter has at least reached a broader audience. Yes, the administrative state itself has always had a large audience of people—a forced audience of those it oppresses. They may not know the philosophy or background of the administrative state, but they do know they are serfs, which is all to the good as far as their masters are

concerned. But no matter how wide that audience, those people are the deplorables; they have no political power, within either party. Still, with Trump, the administrative state, very briefly, seemed to be threatened. No more, though, since the administrative state, its enablers and its beneficiaries quickly united to protect their works from the attacks of the Lilliputians.

Even so, Marini's work was the origin of key themes promulgated in 2016 by Michael Anton and the famous *Journal of American Greatness*, which helped get Donald Trump elected. But Marini has little apparent interest in retail politics. This book mentions Trump occasionally, but is mostly a book of political philosophy, consisting of writings across several decades. It is quite dense, and sometimes repetitive due to the same themes being sounded over the years, but it rewards close attention. The service of Marini's book, therefore, is not to offer yet another program for dismantling the administrative state. As I say, that can only be done with dramatic and traumatic effort and change. Instead, his book is better viewed as a way to understanding why America is no longer, and never again will be, America. It is simply a country that has kept the same name and substituted a fundamentally tyrannical government for that of free men. The sonorous words of the Founding Fathers still echo in our heads, but like Dostoevsky's Christ, if any of them showed up to complain, they would be quickly renditioned to a windowless room in Langley as a threat to what is now falsely called America.

The key word in this book is "nature." Marini goes back to the beginning, and for political purposes, that is human nature. It is not so much human nature that Marini discusses, but what is derived from that, "natural right," shown by "natural reason," a key term for the Founders and one of great importance to Leo Strauss, of whom Marini appears to be a disciple. As I understand it (though Marini does not attempt to offer a complete background, leaving that to others) the primary point is that for Strauss, natural right is contrasted with positive right, that is, rights granted by specific law, first formally championed by August Comte. Natural right, whose main characteristic in administration is prudence, or practical reason, the application of natural reason in concrete circumstances, precedes law; it therefore is superior to positive right, and if the two conflict, should rule. It did in the original system

of the Constitution, which is one reason why the Constitution was the supreme political achievement of all time, so far. But it no longer does—rather, the Progressives, with their Hegelian view of history tending toward the end of political conflict, have enthroned positive right and chained natural right in the dungeon.

Marini subscribes to a theory of government, and in particular, of the Constitution, where a sovereign people created the government. It is not a social compact between people and government, since the government is a created thing, not something that makes agreements. Not for Marini the idea that government is organic and necessary to all societies; the best societies are created by formal agreement among wholly free men. The Constitution, based on natural right, is an actual manifestation of such an agreement. It is not positive law itself; it supersedes all positive law and embodies natural right, and therefore its meaning, unless amended, is (or should be) fixed and unchanging for all time (though Marini buys into Harry Jaffa's idea that the Constitution should be interpreted through the lens of the Declaration of Independence, with its emphasis on the supremacy of the people).

In contrast to this vision, G. W. F. Hegel is the man Marini points to as the origin of the modern administrative state, and the godfather of the American Progressives. He originated the concept of History as philosophy. His view of history as forward progress, which is appealing on the surface and wildly appealing to the Left, is the apple in the Garden. In Hegel's words, "the general dividing line between constitutions is between those that are based on nature and those that are based on freedom of the will." If a group arises that believes it is smarter than the people, but has their best interests at heart and accomplishing their supposed will as their goal, and that group believes that accelerating the inevitable procession of history is possible, it is certain to reject nature in favor of will, which means erasing limited government based on a vision of natural right and substituting technical administration toward the goal. Such a group was the Progressives, and their greatest handiwork, the golem of the modern age, was the administrative state.

The Progressives therefore viewed the Constitution as wholly mutable and requiring change with the times—the times as dictated by the philosophy of History. Certainly, the people were sovereign—and their new technocratic masters would help them implement their will, whether

the people knew that was their will or not, and whether they liked it or not. The Progressives believed that “political life and religion must vanish to enable the perfecting of economic and social conditions through the establishment of the new social sciences, thereby opening up the possibility of complete freedom, or individual self-fulfillment. The coming into being of the rational or administrative state is possible, and necessary, only at the end of History, when the rule of the philosopher or statesman can be replaced by the rule of organized intelligence, or bureaucracy.” Progress is the goal, and it is possible, but only if the path illuminated by social science, which determines the necessary conditions of society and economy, is paved and lit. Those with knowledge, experts, supposedly neutral and technocratic, must be given all power necessary to this end. Structures which are a drag on their power must be thrown overboard.

A vision based on unchanging natural law, which underlay the Founding, is the opposite of the Progressive vision. “Nature and reason had established the theoretical and moral foundation of individual rights. Thus, freedom was necessarily subordinate to the moral law; rational limits on individual freedom were imposed by nature itself, by the natural human desire for happiness. As a result, the mind, human intelligence, and happiness were thought [by the Founders] to be the possession of individual human beings.” The Constitution embodied this vision. The Progressives, however, believed that right inheres in will and applied intelligence in groups; thus, to accomplish the goals of History, positive law suited to the modern world was the only touchstone possible. When History advanced far enough, there was no longer any need for the antiquated structures of the Constitution, which therefore was re-interpreted as infinitely malleable.

The administrative state takes the resulting power granted to it and, because the idea of the common good is anathema to technocrats informed by positivist social science and historicism, who see justice as being more precise than that, uses it to make rules that address private interests, not laws that address general interests. What this means in practice is that Congress has abdicated its obligation to make general laws for, and in consideration of, the common good, and merely passes enabling acts, delegating its power, for the administrative state, whose handmaiden it is. To the extent Congress passes laws that are

not enabling acts, they are laws directed at private interests, not the general interest, since individual Congressmen no longer see their job as representing the general interest. This paradoxically erodes local institutions, whose relative power and importance declines.

The enabling laws passed by Congress are incomprehensibly complex and designed not to make rules that are generally applicable and generally understood, but to make straight the path for the bureaucracy to make the real laws. (Although Marini does not mention it, this attitude is most famously encapsulated in Nancy Pelosi's cry that it was necessary to first pass Obamacare to find out what was in it. It was interpreted as an admission the law was too long and complex; in reality, it was an admission that the law was meaningless on its face, and there was no law until the real law had been created by bureaucrats.) The courts have similarly abdicated their powers to the bureaucracy, and the President has been forced, or sometimes chosen, to abdicate his powers as well. Rather than each branch interpreting and acting for the public good, as contemplated by the Constitution, they view determining what is good for the public, and how to accomplish it, as the role of the bureaucracy. Their role becomes "mobilizing and accommodating the various organized, political, economic, demographic, or social interests," which then become supplicants to the administrative state. But the "electorate has no access to the centers of power of the administrative state," which means that there is no real rule of law. The peons must merely trust, against the evidence of their five senses, that their masters are acting in their best interests, and ignore that the idea of the common good, that is, the people's best interests as a whole, is laughable to their masters.

Marini, simultaneously channeling John Locke and Carl Schmitt, argues that the key role the legislature should play has been totally lost, not just in practice, but also in theory. He quotes Carl Schmitt in *The Crisis of Parliamentary Democracy*, "Only a universally applicable law, not a concrete [i.e., administrative] order, can unite truth and justice through the balance of negotiations and public discussion." This "intellectual" function, resulting in general laws, should be the chief function of the legislature. Yes, this creates a tension between legislation and execution of the laws. In Marini's view, the Constitution best addressed the inherent tension between the legislature and the executive (citing Schmitt, again, for the doctrine that "he is sovereign who decides the exception"),

by creating a working separation of powers. But now, the separation of powers is destroyed, and (citing Schmitt yet again), “a dictatorship is not just an antithesis of democracy but also essentially the suspension of the division of powers . . . a suspension of the distinction between legislative and executive.” No prize for guessing who, or what, is the dictatorship today. And Strauss saw the essential role of a constitution as balancing wisdom and consent, and the primary evil (among many) of the destruction of the Constitution as the destruction of that balance, with the elevation of false wisdom and the erasure of consent.

The Progressive vision is seen in all its naked, rancid glory in the infamous words of a leading Progressive, Mary Parker Follett, in 1923, which Marini quotes several times. “We have seen that the free man is he who actualizes the will of the whole. I have no liberty except as an essential member of the group.” The administrative state sees itself as neutral, technocratic, and actualizing the supposed will of the supposed whole. I have written elsewhere how that benefits the Left, but that is not Marini’s point. (In fact, though no doubt Marini is on the political Right, people like Newt Gingrich and George W. Bush get equal time for beatings in this book.) Rather, it is that “unaccountable knowledge elites” run the country. Certainly, the bureaucracy is in no way neutral, as its creators believed it would be, but the advocacy on which Marini focuses is that in favor of its own continuation and growth, through, among other means, destroying antiquated views of the proper role and functioning of government, and substituting a unified will of supposedly neutral administration of a rational positive law, where the only role of politics is, preceding administration, to determine the supposed moral will of the people, which consists not of what they do want, but of what they should want, as determined scientifically by their masters.

Among other implications, Marini ties this to different views of what it takes to be a citizen, which implicates immigration policy. Unlike the Founders, or modern men like Calvin Coolidge, who viewed citizenship as possible for all who shared the common vision of the common good, the Progressives (stone cold racists all) agreed with John Calhoun that only some people, adequately advanced people, often determined on the basis of race, were fit for citizenship. But those who were admitted were no longer required to conform to the common good; rather, they were encouraged to get what they could, as groups, from the administrative

state. They naturalized much more slowly, and often never really naturalized, leading to the immigration nightmare we have today.

Of course, if our government no longer sees its functions as addressing the common good, it is harder, or impossible, for politicians to appeal to the common good. The divisiveness inherent in the rulemaking of the administrative state thereby encourages politicians to appeal for votes to subsets of the population, or rather to subsets of elites, increasing the divides of the country, which the Constitution was created to bind. (This same effect is shown in demands for “more democracy” through such structural changes as eliminating or circumventing the Electoral College.) Marini sees Trump, or saw Trump in mid-2016, as interested in reviving the old system and perceptions; citing Machiavelli, that since he has refused to “walk on paths beaten by others, he has all those who benefit from the old orders as enemies, and he has lukewarm defenders in all those who might benefit from the new orders.”

Unlike many conservatives, Marini admires, but does not worship, Alexis de Tocqueville, viewing him instead through the lens of Strauss. True, he foresaw many of our problems, such as his famous insights into the “soft despotism” to which democracies are subject. But he did not see deep enough; blinded by, at root, the vision of History as forward progress and by a belief in the general will similar to Rousseau. Yes, Tocqueville wanted the general will exercised at a local, or parochial, level, which made individual interests compatible, or more compatible, with the interests of the community. He was not interested in the centralization of the administrative state. But this vision exalts will over nature; abstract reason substitutes for natural, or metaphysical, reason, and ultimately must collapse into the administrative state, regardless of intent.

Marini doesn't sound real optimistic or offer any concrete solutions. “Any real change will likely come only if a president can mobilize an ongoing political constituency that can begin to effectively oppose the entrenched interests and their supporters in government. The administrative state has established tremendous power in Washington, but it has engendered considerable opposition in the country at large.” Marini glosses over that it is not only in Washington, but also in all the other power centers, from New York to Los Angeles, where those benefited by the administrative state have power, and that the “country at large”

has very little power, which those in power are doing their best to strip from them. (He also makes a compelling case that Richard Nixon was brought down because he threatened the administrative state, which would seem a cautionary tale for any President so inclined to mobilize a political constituency.) None of this is very helpful, but I suppose that's not Marini's project.

Perhaps as an alternative to solutions, Marini says "It may be the case that modern government requires a centralized administrative state, although that is not self-evident. But, if that is the case, then the operation of the separation of powers, understood in terms of constitutional government, is no longer possible in a meaningful way." This strikes me as a borderline astounding admission, in essence one of defeat, and surprising since Marini doesn't seem defeatist elsewhere. He quotes Strauss, in discussion with Alexandre Kojève, "There will always be men who will revolt against a state which is destructive of humanity or in which there is no longer a possibility of noble action and of great deeds." And he cites Strauss to the effect that Burke was wrong; we should resist to the end, no matter how powerful the currents against us. "[Burke] does not consider that, in a way which no man can foresee, resistance in a forlorn position to the enemies of mankind, 'going down with guns blazing and flags flying,' may contribute greatly toward keeping awake the recollection of the immense loss sustained by mankind, may inspire and strengthen the desire and the hope for its recovery, and may become a beacon for those who humbly carry on the works of humanity in a seemingly endless valley of darkness and destruction." I think Marini is right, that modern government can't be done the way we do it now. That just shows that our system is terrible, not that it can't be done at all if we build a new system. The problem is our government, not the inherent needs of modern government.

Starting simple, I can offer an easy solution. Congress could dismantle the administrative state overnight, if men of virtue controlled Congress. Were that to happen, no doubt the courts would be weaponized by the Left to extra-constitutionally forbid this, creating a constitutional crisis. That would be salutary if it were used to permanently break the power of the federal courts to rule us outside the original Constitutional framework—perhaps by impeaching and removing one hundred percent of the federal judiciary at a sweep, and replacing them



with individuals clearly sworn to actually follow the Constitution. But is any of this going to happen? No.

Since I am all for solutions, or rather, my political program, Foundationalism, is all about solutions, what do I suggest? Here I will ignore Band-Aid, if satisfying, partial solutions, such as rustication of bureaucrats, which I have discussed elsewhere. What would a completely revamped system of this aspect of government look like, given that laws require execution, something recognized by all political thinkers?

For starters, it will not view the Founders as particularly excellent, though it will view them as informative. Their vision, such as that of later Thomas Jefferson, that the masses contain, and can be further educated in, virtue has been largely falsified. And as I often say, trying to turn the clock back is impossible and stupid. Unlike Marini, I don't think the Founders' vision was anything all that special, although it's certainly better than what we have now. The only reason it worked was that, for a while, it was the superstructure erected on a uniquely virtuous society with unique geographical and resource blessings. I have no interest in the will of the people, and while there is natural right, it has little to do with the rights of the people to rule themselves, or to consent to any kind of social compact. As the Romans found, as an empire grows and becomes more heterogeneous, the mass of people cannot be allowed much, if any, direct role in rule. John Locke will not be honored, though Leo Strauss may (Marini has inspired me to learn more about his thought, which I do not think is as favorable to the Founding as Marini implies, though it is famously opaque and subject to alternate meanings). Put another way, Foundationalism doesn't have any interest in democracy. It will have a mixed government, with a balance between what amounts to aristocracy and a very strong executive, to which will be added some sharply limited democratic elements (the Roman tribunate comes to mind). All elements of society will be represented, but not necessarily participate, or rule.

Under Foundationalism, there will be execution of the laws, as there must be, but bureaucracy will be sharply limited and will be strictly confined to executive action, having no rulemaking ability. In Marini's words, Foundationalism will govern, not administer. General laws will address public interest, not private interests. The impact of the central government on daily life will be massively reduced, since Foundationalism

does not believe in the arrow of history or technocratic rule, and does not believe that the central government should dictate local practice, though it will directly encourage virtue and discourage vice, and forbid certain especially pernicious negative behaviors and reward, or make a condition of national advancement, certain positive behaviors. (Foundationalism does not work at all unless the people acquire a renewed virtue not present today, a topic I will address elsewhere. There is, needless to say, no direct path to Foundationalism through current political structures, although in my thoughts on Wolfgang Schivelbusch's *Three New Deals* I have begun to outline a possible actual path, including acknowledging that public opinion matters, even if widespread participation in exercising power does not.) Local interests will be looked after by local people; there will be no national laws on the environment, on discrimination, on guns, on education, or on any other of the vast majority of topics federal legislation, and therefore the administrative state, now covers.

None of this implies that Foundationalism will be a libertarian or minimalist government. The modern administrative state has erased the crucial distinction in the minds of people between an intrusive government and a strong government. Foundationalism will have a strong central government, but its ends will be limited. In foreign policy, for example, the only relevant criterion will be the ends of the nation (although since Foundationalism will explicitly prefer Christianity, the interests of Christians as Christians, and of Jews, outside the country will be considered an interest of the nation). It will offer an aggressive industrial policy tailored to benefit the nation, and only the nation, meaning workers, not a parasitic elite. But very large and expensive projects that require national coordination will be executed by the central government; these include substantial investments in grand public works, including both earthbound and in Space. The latter will be implemented both as an economic matter to obtain, potentially, desirable resources and as a social matter, to increase the prestige and glory of the nation, which is a public interest that binds the people together. Along the same lines, some science will be strongly encouraged and funded—but some, tending to transhumanism or any that denies human dignity, or the law of God or of nature, will be suppressed, and

pseudo-sciences, including most of what currently passes for so-called social science, will be held in contempt.

The goal here is not utopia; it is to all muddle through together, to achieve as much human flourishing as reasonably possible, absorbing the ups and downs. None of this will happen under any path in current operation; the end stage we have entered of our so-called Republic is, as Carl Schmitt famously said of history (though he attributed this view to Juan Donoso Cortés, without endorsing it himself, and he implied it was overly pessimistic), “like a ship careening aimlessly through the sea, manned by a bunch of drunken sailors who scream and dance until God thrusts the ship under the waves so there will be silence.” After the silence, though, we can hope, comes the dawn, and birdsong.