

# Interpretation

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In everyday political debates, most would find it odd, or at least gratuitous, to invoke the history of political philosophy. Yet two recent books emphasize the centrality of political philosophy to American politics. *The Rediscovery of America: Essays by Harry V. Jaffa on the New Birth of Politics*, edited by Edward J. Erler and Ken Masugi, collects the mature writings of the late Harry Jaffa, focusing on the continuity between classical political thought and the American founding. *Unmasking the Administrative State: The Crisis of American Politics in the Twenty-First Century*, by John Marini and edited by Ken Masugi, compiles a variety of Marini's writings on public administration and constitutionalism. Of the two, Jaffa's book is more directly philosophical while Marini's is more obviously political, but neither book neglects to leave room for philosophy or politics. Both share an underlying premise that the American founders created a limited government to protect natural rights, which is threatened by the denial of a fixed law of nature and by the centralization of governmental power in an administrative state. In many ways Jaffa's writings, analyzing the principles behind the American founding, and Marini's, discussing current political challenges posed to this founding, form one whole out of two halves. Jaffa and Marini question much of the political status quo, leaving

readers with both concern over how much of the founders' nation remains and cautious optimism that founding principles can be recovered.

*The Rediscovery of America* is filled with Harry Jaffa's signature pugnacity and perspicacity. Jaffa challenges the ideas of leading figures of his time on all sides as historicists, campus radicals; Harvey Mansfield Jr., Chief Justice William Rehnquist, Russell Kirk, and Irving Kristol are just a few of the subjects to earn Jaffa's rebuke. The unifying thesis is that the principles of the American founding were not wholly modern but involved major classical elements that require virtue and a shared common good. Jaffa accepts that John Locke was the primary source for the founding, but he parries that far greater concordance exists between the ideas of Locke and Aristotle than is generally accepted. This is not the Harry Jaffa of *Crisis of the House Divided*, who argued that Abraham Lincoln transcended the founding by introducing Aristotelian elements to elevate American political thought, but the Jaffa of *A New Birth of Freedom*, who posited that Lincoln completed the founding by bringing the founders' intentions for a good regime, in the Aristotelian sense, to fruition.

In articulating his novel thesis about the American founding, Jaffa contends that the central divide in political philosophy is not between ancients and moderns but between reason and revelation. Locke, he argues, sought to reconcile reason and revelation in a manner consistent with the common good. Whereas Aristotle could assume that citizens would unite in pursuit of the common good owing to their city's particular religious beliefs, Locke had to confront the religious conflict of his era and devised the theory of natural rights as a common good that individuals could agree to pursue regardless of religious belief. In this manner, classical natural right was changed for the Christian world. Unlike the ancient city, where the laws stemmed from the particular god attached to each city, Christianity introduced a direct relation to a universal God that precedes political obligations. The state of nature, as "a non-political state governed by moral law" (43), represents the relation of every Christian to each other as members of the city of God whose primary obligation lies outside the political sphere. Christianity, by recognizing the independent relation of each person to God outside of the political community, not only paved the way for but required a doctrine of natural rights that belong to each person as a result of his creation. For Jaffa, Aristotle and Locke may have had different emphases as a result of divergent political conditions, but Locke's principles are consistent with classical natural right as understood by Aristotle. Locke articulated natural right, which is always changeable, to

meet new political conditions Aristotle never faced through a fixed law of nature known through reason. It may appear that Locke introduced a notion of equality that is absent in Aristotle, but in his famous statement that a man without a city is either a beast or a god, Aristotle understood as well as Locke did that all humans are equal in that they share the same human nature. It is this shared and fallible human nature that necessitates, for Locke, that no one can rule over another without his consent. In summation, Jaffa pronounces that “had Aristotle been called upon, in the latter half of the 17th century, to write a guide book for constitution makers, he would have written something very closely approximating Locke’s *Second Treatise*” (9).

This creative reinterpretation of Locke has profound implications for Jaffa’s understanding of the American founding. The founders did not create a low regime that had to be elevated later, but from the outset built a regime on high moral principles. Ancient divisions of religion or ethnicity were replaced by the natural rights of all humans, but for ancient ends. The Constitution’s institutional solution, of faction counteracting faction, never assumed to entirely account for a lack of wisdom and virtue in the citizenry. Actual political rule requires a natural aristocracy with the best citizens serving the nation to effectively protect the equal rights of all. The pursuit of happiness may be an individual pursuit in the state of nature, but it becomes the pursuit of the common good once in society. A regime rooted in a theory of natural rights but exercised through majority rule requires moral education on the natural rights of all so that majority rule respects the rights of the minority. Religious liberty is the architectonic right as divisive religious issues that lead to infringements of minority rights are removed from the political realm. This sequestration of sectarian religious questions from politics is intended to promote a common morality where citizens of differing religions reach a general consensus on the common good. The founding, as “the secular redemption of mankind” (58), did not just promote the peaceful coexistence of multiple sects but forged an alliance between reason and revelation on a fixed nature with a moral code for political society. The American government was instituted to protect rights but this goal requires a shared common good of protecting the rights of all. The right of liberty allows all the opportunity to freely pursue classical virtue. In Jaffa’s words, “the American Founding limited the ends of government. It did not limit the ends of man. The ends of the regime...were lowered. But the ends both of reason and revelation served by the regime...were understood to enhance...the intrinsic possibility of human excellence” (136).

This volume provides an excellent introduction to the later thinking of Jaffa for those unfamiliar with his work and a starting point for further debate with those already familiar with him. Jaffa makes a Herculean effort to show the resonance between Aristotle and the founders' Locke. His clear intent is to rescue the founding from the disapprobation heaped upon Locke in some circles without denying the centrality of Lockean natural rights to the founding. Montesquieu is conspicuously absent from Jaffa's account, an absence explained by the fact that Jaffa's emphasis is on the ends of government, expressed in the Declaration of Independence, rather than the means articulated in the Constitution and its separation of powers. By abstracting from the governmental powers necessary for the protection of rights, however, Jaffa misses the context that gives full life to the founders' regime. Lincoln needed the full use of the constitutional executive power to complete the founding and in doing so adhered to the constitutionalism of Alexander Hamilton rather than the extraconstitutional prerogative of Thomas Jefferson, whom Jaffa supposes to have been Lincoln's teacher. The Declaration's guarantees mean little without the robust constitutional framework that supports them.

On a higher level, one might question whether the thesis of classical continuity with Locke is true, or even necessary. In emphasizing the similarities between Aristotle and Locke, Jaffa obscures their major difference while denying Locke credit, or blame, for his innovations. Aristotle may have recognized that all humans are equal through a shared nature, but an equality of natural rights is absent from his work. Natural rights were not just a prudential adaptation to the Protestant Reformation but the very purpose of government for Locke and the founders. Jaffa implicitly recognizes that in lowering the end of government to the protection of rights, the pursuit of virtue must be achieved on an individual level rather than through the city, as Aristotle envisioned. Whereas for Aristotle the city exists for the sake of living well, the founders' government exists for the protection of rights and leaves individuals to pursue virtue (or not) for themselves. This concession to the fallibility of human nature allows for more stable government, since a government with the unlimited power necessary to attempt to make humans good is bound for failure and tyranny. Jaffa is correct that there were classical elements present in the founding but oversells his claim. In articulating a Lockean conception of natural rights, the founders endorsed a thoroughly modern idea. There is no need to deny this fact out of a reflexive concern that all moderns are inferior to their ancient predecessors. The founders' thought still allowed for the pursuit of the good life in a way that the thought of other moderns such as Machiavelli or Hobbes did

not. In fact, the equality of natural rights, understood as an equal opportunity to exercise one's rights, offers all citizens an opportunity to pursue virtue if they choose. The American founding was rooted in modernity, but a more moderate modernity.

In *Unmasking the Administrative State*, John Marini picks up where Jaffa leaves off. Marini applies the principles of the American founding to the problem of public administration in the twenty-first century. For Marini, the founders understood government to be limited to the protection of natural rights and held public administration to be a prudential activity in service of this end of government. The founders' constitutionalism was replaced by a Hegelian philosophy that requires an unlimited government to carry out the rational will of the people. The state, as the ethical and organized embodiment of rational will, rather than the people, becomes the sovereign, making all rights alienable provisions from the government. A government that grants rights places entitlements as the end of government and "is therefore linked to the satisfaction of needs, economic and social" (17). Political parties have lost power to represent the people as bureaucratic patronage has supplanted the spoils system. Bureaucracy is enshrined as the rationally intelligent body that achieves government's end through modern social science. The founders, in contrast, recognized that all humans are self-interested and would never have conceived of a special class of civil servants with exclusive knowledge that entitles it to all the powers of government.

The modern administrative state has displaced the founders' intention, according to Marini, which was that the constitutional separation of powers must work to force the political branches of government to articulate a common good. Marini is a bit vague on what this common good could be, although the implication is that it would be some application of the theory of natural rights to variable circumstances. Without crises, political institutions have been inept at pursuing a common good. Despite this divergence from the founding, the very fact that founding principles are still studied and debated provides hope, in Marini's view. As long as public opinion clings to the founders' constitutionalism, the administrative state cannot entrench itself as legitimate. The fate of American constitutionalism hinges on the virtue of the American people and whether they can preserve constitutional principles. A people who do not have an enlightened understanding of their rights or are "insufficiently vigilant concerning the use of power by government...cannot retain the form of constitutionalism regardless of its structure. They have already lost its spirit by failing to understand or by denying its principle" (56). Regardless of who

occupies particular offices at specific times, institutions can do only so much to safeguard constitutional government. Without widespread consensus among the people on first principles, any changes to public administration towards constitutionalism will be transient or ineffective.

Marini demonstrates a proper understanding of the constitutional separation of powers as he recognizes that the Constitution does not merely distribute a single political power to the three branches of government but places the three distinct powers of government in the branch best constituted to exercise each power. At times, however, he evinces a more limited doctrine of separation of powers than the founders intended. In describing a limited government with Congress as the first branch, Marini suggests the negative conception of separation of powers—that powers are separated so no one branch can become tyrannical—but he never stresses the positive side of separation of powers, where each branch is given the adequate powers to pursue its limited ends and fully exercise its power. As Hamilton argued in *Federalist*, No. 23, “the *means* ought to be proportioned to the *end*; the persons from whose agency the attainment of any *end* is expected, ought to possess the *means* by which it is to be attained.” Marini never explicitly denies this conception but emphasizes the need for government to control itself at the expense of the need to control the governed. The progressive challenge to separation of powers that Marini critiques succeeded politically because it redefined the founders’ separation of powers as the rigid limitation of governmental power and an impediment to progress rather than as the full empowerment of government to perform its limited ends. Woodrow Wilson and his fellow progressives obscured the extent to which they differed with the founders on the ends of government by misrepresenting the founding to favor an overly restrictive means for these ends.

In confronting the administrative state, Marini must grapple with the thought of Alexis de Tocqueville. Marini recognizes Tocqueville’s prescience in having foreseen the tendency of administrative centralization towards a new, soft form of despotism that erodes freedom in favor of radical equality. For Tocqueville, the alternative of administrative decentralization fosters the active participation of citizens necessary to sustain liberty and prevent democracy from sliding into the mere pursuit of individual interests. At the same time, Marini articulates the limitations of Tocqueville’s thought. Tocqueville did not share the founders’ conception of a fixed natural law to direct human freedom but favored providence as a historical force that allows for freedom to be expressed as free will. Without a principled defense of the equality of natural rights, Tocqueville could not articulate founding principles nor forestall what

he saw as a deleterious yet inevitable historical development towards centralized administration. Taking a middle ground, Marini eschews the tendency to either unqualifiedly praise Tocqueville as a prophet or dismiss him as entirely irrelevant for contemporary politics.

The book's most intriguing argument is that the administrative state was not fully institutionalized during the New Deal or the Eisenhower administration but in Lyndon B. Johnson's Great Society. This change occurred when Congress, which had heretofore been the representative of local interests rooted in the states, chose to preserve its status as the primary branch of government by assuming the role of superintendent for the administrative state. This fascinating thesis could use more concrete historical evidence in its support. The great strength of Marini's writing, a rare ability to avoid policy minutiae while writing on public administration, is also its weakness, as some arguments could benefit from supporting details.

Marini's analysis is political without being partisan. This reflects his argument that bureaucrats have become their own faction who defend administrative rule. He criticizes Democrats for favoring a government with unlimited domestic power and Republicans for advocating unlimited national security power. Marini chastises Newt Gingrich for attempting to function as a prime minister while Speaker of the House by directing administration through unified leadership of congressional committees. The boldest chapter of Marini's book may be a revisionist account of Watergate as an institutional clash between the political claims of the president and Congress rather than as a legal conflict between a president and the rule of law. According to this narrative, Richard Nixon earned a popular mandate in the 1972 election on the goal of reining in the administrative state and assumed this mandate to delegate any means necessary to obtain this end. The administrative state, through its patrons in Congress, used Watergate to cripple Nixon and save itself. Marini claims that "although Woodward and Bernstein were lauded as investigative reporters, they served merely as a conduit by which the bureaucracy could undermine the authority of an elected officeholder" (145). Marini does marshal impressive evidence that Nixon planned to confront the administrative state in his second term, but does not contextualize this argument within the actual Watergate scandal. It is never explained how the illegal wiretapping of a political party's headquarters (especially in one of the least competitive presidential elections in history) and the subsequent conspiracy to cover up the crime were in any way congenial means to control the administrative state. Moreover, Nixon would not have been aware that he had

earned a mandate from the people until after election day, long after the actual break-in. A president should indeed have broad means to hold officers and agencies that exercise the executive power on his behalf accountable, but illegal meddling in an election and in a criminal investigation is not a fitting means to that end.

Marini's discussion of citizenship is particularly relevant for contemporary politics. For the founders, American citizenship was based in the equality of natural rights, supplanting other criteria such as race, ethnicity, culture, or religion as the determinants of citizenship. The capacity for self-government of potential citizens should be determined on an individual basis, rather than through group status. It was the Progressives, Marini argues, who altered the basis of citizenship to the historically conditioned categories of class, culture, and race. Group status then determines rights, as individual freedom is found through participation as a member in the group. Marini does a superb job of tracing the oft-forgotten correspondence between the Progressive understanding of citizenship and appalling racial theories. He provides solid evidence that Charles Merriam, John W. Burgess, Herbert Croly, and other prominent Progressives all at one point supported "scientific" theories that defended racism on the basis of supposed racial hierarchies revealed through historical evolution. Citizenship should, for Marini, be based on an individual's capacity to live in accord with the principles of the Declaration of Independence, rather than on assumptions derived from group status.

By connecting the development of the administrative state to political philosophy, Marini masterfully shows how ideas affect politics. Yet his almost singular focus on Hegel and German historicism as the source of the administrative state minimizes other equally important influences. Marini admits that Max Weber and social Darwinism influenced the growth of the administrative state, the latter confirming historical evolution through biology, but treats Hegel as the authoritative source for the administrative state. Hegelianism certainly had a major effect on public administration, but in the United States social Darwinism shaped the administrative state just as much as, if not more than, Hegelianism. Social Darwinism has an innate appeal and simplicity as a theory claiming scientific legitimacy that could capture the popular mind in a way that Hegelianism, with its own complex terminology and logic, never could. Even Hegel's greatest American student, Woodrow Wilson, wrote that government is a living organism "accountable to Darwin, not to Newton."<sup>1</sup> The

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<sup>1</sup> Woodrow Wilson, "The New Freedom," In *Woodrow Wilson: The Essential Political Writings*, ed. Ronald J. Pestritto (Lanham, MD: Lexington Books, 2005), 121.

synthesis of Hegelianism and Darwinism was, however, still not the full source of the administrative state; both Weber and pragmatism, especially the strain associated with John Dewey that particularly influenced the New Deal, were major contributors to modern administration.

Students of American political thought, as well as anyone with an interest in American politics, will greatly benefit from the publication of these two volumes. Many of the essential writings of Jaffa and Marini are herein collected in single volumes with succinct and informative comments from the editors. Both books articulate fundamental principles of the American founding and contemporary challenges to those principles. The drastic changes they detail could leave readers with a sense of pessimism, or even despair. Hope remains, however, as founding principles have not been entirely forgotten. As long as books like these continue to be written, the argument for founding principles can be perpetuated along with our political institutions. Just as the institutional framework left by the founders still requires good citizens, a rigorous education in constitutionalism will always be necessary if the Constitution is to endure. These volumes are compelling examples of that education in practice.

