

Debating the American State: Liberal Anxieties and the New Leviathan, 1930–1970. By Anne M. Kornhauser. Philadelphia, PA: University of Pennsylvania Press, 2015. 323 pp. \$59.95 cloth.

Reviewed by Aaron J. Ley, Department of Political Science, University of Rhode Island

The rise of the modern day administrative state is a profound achievement that caused considerable anxiety among liberals who set out to reconcile bureaucratic expansion with American democracy. In *Debating the American State*, Anne M. Kornhauser argues that the war mobilization and economic conditions that gave rise to the administrative state made these tensions even more apparent because the expansion of the state occurred without first forming a “principled justification” that would “confront the effects of bureaucracy on democracy, legality, and individual autonomy” (p. 225). As bureaucratization accelerated, American social scientists, German émigré legal academics, and the moral philosopher John Rawls began generating “a principled ‘legitimizing theory’ for the administrative state” (p. 2). Despite their efforts, the state “was never endowed with a principled rationale by the liberals who supported it,” (p. 3) which may explain the persistent liberal critique of the administrative state and the exploitation of its contradictions by “powerful conservative movements” (p. 222).

Kornhauser follows her argument with a carefully narrated portrayal of contemporary American thinkers and German émigré legal intellectuals struggling to strengthen statist liberalism during the growth of the administrative state. The key actors are scholars like Pendleton Herring who discovered that interest group pluralism might avoid newfound problems like “agency capture” by steering agencies toward standards like the “public interest.” As the nation mobilized for war against Nazism, however, these scholars shifted their focus to “guard[ing] against totalitarian tendencies,” (p. 75) by curbing administrative discretion. In the backdrop of totalitarianism, scholars worried that malefactors would seize on a vague standard like “the public interest” in an effort to aggrandize power. In turn, legal reforms like the Administrative Procedures Act were passed to constrain power, while a sociological critique emerged from scholars like Philip Selznick who delivered a damaging takedown of the Tennessee Valley Authority (TVA) program, an exemplar of the administrative state. Troubled by the possibility of TVA-style “bureaucracies [having] autonomous properties that enabled them to govern quite apart from the other branches,” (p. 84) scholars embarked on reconciling the administrative state with American democracy by advancing reforms like “representative bureaucracy,” which continue to find contemporary support.

War mobilization also meant that renewed questions were raised about constitutional democracy during times of emergency. Liberal critics could not ignore that the highly bureaucratized and centralized arrangements through which the Nazi regime claimed to exercise lawful power resembled the same administrative arrangements that were created by the Americans to mobilize for war. Kornhauser argues that German émigré intellectuals used their experience under the Weimar Republic to reinvigorate the debate over the administrative state and, consequently, “brought a fresh perspective to the threats to constitutional democracy by administrative hegemony” (p. 14). For different reasons, diverse scholars such as Friedrich von Hayek and Franz Neumann began “theoriz[ing] a concept of the rule of law under duress” (p. 94) that placed formal constraints on state power and advanced an ethical dimension of the rule of law ideal by emphasizing generality, fairness, and rationality—characteristics that promoted individual freedom and equality. Yet, the rule of law ideal faced new challenges for the German émigré intellectuals who were involved in the occupation and reconstruction of Germany. In addition to showing how the military occupation of Germany placed stress on the rule of law by virtue of the fact that old laws needed to be revised and new laws needed to be written by the occupiers, the author also describes how intellectuals approached the whole question of delivering justice in Nuremberg without a criminal code that described the penalties to be imposed on Nazi officials.

Even in the aftermath of the war there remained an uneasiness about the administrative state that was addressed by John Rawls. Rawls fundamentally reexamined the state and devised ethical criteria by which to judge political institutions. His work advanced principles of justice as fairness that allowed citizens autonomy to seek “a fair distribution of and equal access to political power, rights, liberties, opportunities, and wealth” (p. 178). These principles elevated individual autonomy and the importance of democratic institutions, like legislatures, while challenging utilitarianism and the primacy of rule by authority, which had become synonymous with the administrative state. Individual autonomy would be further promoted and shielded from the vagaries of the administrative state by a robust system of law that is knowable, impartial, and supported by mechanisms of due process, yet capable of being “overridden by one’s belief that the principles of justice have been violated in some fashion” (p. 209).

Debating the American State would make a great contribution to a graduate-level seminar in political development or administrative theory because it traces the ideas that continue to shape administrative theory to their troubled origins. It is for that reason that the author might have elaborated on the continued persistence and

effect of these ideas on contemporary administrative thought. For instance, Rawls's distributional concerns are clearly reflected in Frederickson's (1971) *New Public Administration*, a normative theory that implores administrators to become agents in pursuit of social equity and administrative change. The collective anxiety about bureaucratic discretion during the war also gave rise to a whole field of administrative ethics that exposed administrators to the principles developed by Rawls and others. This culminated in work by scholars like John Rohr (1978), who wrote that bureaucratic discretion can be tempered and informed by "regime values," widely held normative values, like equality and liberty, to be uncovered and acted upon by administrators. Frederickson (1971) and Rohr (1978) are but two of many examples that can be used to support Kornhauser's position that "[t]he modern American liberal state and the statist liberal creed were born in crisis and bear the marks of that traumatic birth today" (p. 229).

References

- Frederickson, H. George (1971) "Toward a New Public Administration," in Shafritz, J., & A. Hyde, eds., *Classics of Public Administration*, 7th ed. Boston, MA: Wadsworth Publishing.
- Rohr, John A. (1978) *Ethics for Bureaucrats: An Essay on Law and Values*. New York: Marcel Dekker.

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