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THE FEDERALIST AT 200— WHAT'S IT TO US?

Michael P. Zuckert*

Not surprisingly, the Bicentennial decade provoked a gaggle of new studies on *The Federalist*, the series of essays prepared by Alexander Hamilton, James Madison and John Jay to explain and defend the proposed Constitution in its 1787-88 struggle for ratification.¹ What may be surprising, however, is the degree to which the themes that dominate these recent studies closely parallel contemporary political life. For example, one of the major questions in the early days of the Bush presidency is how far Bush will depart not just from the policies, but from the overall vision of America that animated the Reagan administration. Bush (or was it Peggy Noonan?) raised the question forcefully in his Inaugural Address: Does America have a moral character? Or is it merely the locus for the play of freedom understood as self-interest, as many took Reaganism to have affirmed? As Bush put it: what is at stake is the question of the quality and character of American souls. And Bush, of course, was not the first president of recent times to raise this question: a crucial fulcrum of the Carter presidency was the diagnosis of "moral malaise," a symptom of that administration's own malaise, but also of this deeper current of concern over the moral quality of the polity.

The recent studies of *The Federalist* pose this very question to the founding generation: what moral qualities beyond self-interest and prosperity did the framers take for granted or mean to impart to the new nation? The authors seem to believe that the answer to

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1. Some of the book-length works which focus exclusively on THE FEDERALIST are D. EPSTEIN, *THE POLITICAL THEORY OF THE FEDERALIST* (1984); A. FURTWANGLER, *THE AUTHORITY OF PUBLIUS* (1984); V. OSTROM, *THE POLITICAL THEORY OF A COMPOUND REPUBLIC* (1987); G. WILLS, *EXPLAINING AMERICA: THE FEDERALIST* (1981); M. WHITE, *PHILOSOPHY, THE FEDERALIST, AND THE CONSTITUTION* (1987); *SAVING THE REVOLUTION: THE FEDERALIST PAPERS AND THE AMERICAN FOUNDING* (C. Kesler ed. 1987). There were also, of course, many other books which touch in more or less substantial part on THE FEDERALIST, as well as a multitude of articles.

this historical and exegetical question will bear in some way on our current situation. Tom West puts the point as incisively as one could wish: "Let us be clear: What the current scholarly debate is about is whether America is corrupt from the very start."² The answer uniformly given by these scholars is "no"—and if not "corrupt from the start" then either not corrupt now, or not beyond redemption now.

On further reflection, it is probably not so remarkable to find this parallel between the scholarly studies and the concerns agitating political life: it was ever so. Take, for example, two earlier giants in *Federalist* studies, Charles Beard and Martin Diamond. Beard, the *enfant terrible* of American historians, found the founders guilty of anti-democratic class bias and self-interest in their constitution, at the same time that he praised their *Federalist* essays as an astute economic theory of politics more or less of the sort he himself endorsed.³ In retrospect, Beard's version of the founding was clearly in the service of the Progressive political agenda of the early twentieth century. The founder's Constitution, it was thought, stood in the way of political and economic reforms that the country required, and Beard's *Economic Interpretation of the Constitution* was at once an explanation of why the Constitution was such a barrier to reform and a delegitimation of it in that (or any) role.

Diamond belonged to an entirely different generation and spoke to a very different political agenda.⁴ By the late 1950s, the Beardian synthesis had been beaten about the head and shoulders by many scholars, who showed that Beard's correlation of the founders' economic interests and political actions didn't hold up.⁵

2. West, *The Classical Spirit of the Founding* in *THE AMERICAN FOUNDING: ESSAYS ON THE FORMATION OF THE CONSTITUTION* 3 (J. Barlow, L. Levy & K. Masugi eds. 1988).

3. C. BEARD, *AN ECONOMIC INTERPRETATION OF THE CONSTITUTION OF THE UNITED STATES* esp. ch. 6 (1913).

4. Diamond's interpretation of *THE FEDERALIST* is contained in a scattered series of essays and book chapters: *Democracy and The Federalist: A Reconsideration of the Framers' Intent*, 53 *AM. POL. SCI. REV.* 52 (1959); *The Federalist's View of Federalism* in *ESSAYS IN FEDERALISM* 21 (G. Benson, et al. eds. 1961); *The Federalist* in *HISTORY OF POLITICAL PHILOSOPHY* 631 (L. Strauss & J. Cropsey eds. 1972); *What the Framers Meant by Federalism* in *A NATION OF STATES: ESSAYS ON THE FEDERAL SYSTEM* 25 (R. Goldwin ed. 2d ed. 1974); *THE FOUNDING OF THE DEMOCRATIC REPUBLIC* 61-110 (1981); *The Ends of Federalism*, 3 *PUBLIUS* 129 (1973); *The American Idea of Man: The View From the Founding in THE AMERICANS*: 1976, 1 (I. Kristol & P. Weaver eds. 1976); *Ethics and Politics: The American Way* in *THE MORAL FOUNDATIONS OF THE AMERICAN REPUBLIC* 75 (R. Horwitz ed. 3d ed. 1986); *The Federalist on Federalism: "Neither a National Nor a Federal Constitution, But a Composition of Both"*, 86 *YALE L.J.* 1273 (1977).

5. L. BENSON, *TURNER AND BEARD* (1960); R. BROWN, *CHARLES BEARD AND THE CONSTITUTION* (1956); F. McDONALD, *WE THE PEOPLE: THE ECONOMIC ORIGINS OF THE CONSTITUTION* (1958).

But important as the scholarly onslaught was in weakening Beard, equally important were changes in historical circumstances and the "felt necessities" of what America required by way of knowledge of the founding. Not delegitimizing but relegitimizing the American political regime was the order of the day in the post-war world. *The Federalist* was welcomed less as the proto-Marxist tract Beard had made it, than as a source of a specifically American alternative to Marxism. According to Diamond, *The Federalist* did not endorse a Marxian idea of class-based politics, but instead "anticipated and refuted Marxism."⁶ Since the newest group of *Federalist* studies all (in one way or another) take a Diamond-like reading as their chief point of departure, a fuller explanation of his position is in order.

Diamond placed a large negative sign in front of almost everything Beard had argued: the founders were not greedy self-seekers, but public-spirited leaders acting on a new theory of politics, itself derivative from modern political philosophy.⁷ They were convinced democrats, albeit sober ones, aware of the imperfections of democracy.⁸ As an expression of modern (as opposed to ancient) political philosophy, *The Federalist* was the bearer of a certain kind of political realism: modern political philosophers purported to base their views and recommendations upon the character of "man as he actually is."⁹ "Man as he actually is" is self-interested and passion-driven. That has implications for both the ends and means of politics. Not the high virtue or perfection of the classical tradition, but "a lowered political end, namely, human comfort and security" came into view as the goal of politics in *The Federalist*.¹⁰ Instead of looking to virtue as the means to political ends, Americans followed the modern political philosophers like Machiavelli and John Locke in attempting to "rely largely instead upon shrewd institutional arrangements of the powerful human passions and interests."¹¹ Diamond located the founders squarely within what David Hume called "the selfish system of morals" which attempted to trace all moral phenomena back to self-interest or egoism.¹² The system established by the Constitution was to produce good or just outcomes from morally indifferent or self-interested actions. In Diamond's

6. M. DIAMOND, THE FOUNDING OF THE DEMOCRATIC REPUBLIC 73.

7. Diamond, *Ethics and Politics*, *supra* note 4, at 82.

8. DIAMOND, *supra* note 6, at 62-70; *Democracy and The Federalist*, *passim*; *The Revolution of Sober Expectations in THE AMERICAN REVOLUTION: THREE VIEWS* 78-82 (1975).

9. Diamond, *Ethics and Politics*, *supra* note 4, at 82.

10. *Id.* at 83.

11. *Id.*

12. D. HUME, AN ENQUIRY CONCERNING THE PRINCIPLES OF MORALS 138 (1970).

hands *The Federalist* became the political equivalent of the Smithian market—a system operating through largely amoral mechanisms to produce beneficial but unintended consequences. *The Federalist*'s approach to politics “smacked much of ‘private vice, public good,’” concluded Diamond.¹³ None of this was meant to depreciate *The Federalist* or the founders' constitutional order. The chief legacy of *The Federalist* was its theory of moderate, i.e. constitutional, democracy, achieved through the new law, but solid devices of self-interest. The American system did not aim high, but it allowed a decent common life. Compared to the various totalitarian alternatives thrown up by modern politics, that appeared very attractive indeed.

By the late 1970s the “felt necessities” had mutated again. More than a decade of intense challenge to the American political order on behalf of civil rights, anti-war, feminist, environmental and other causes produced new perspectives on American political life. Diamond's reading of *The Federalist* was called into question because the theory of the polity he uncovered did not seem to speak to present concerns. Hunger for a more fervidly moral dimension to American public life was abroad in the land—although people at various places on the political spectrum had very different ideas about the substance of that morality.

The recent studies of *The Federalist* then, are both shaped by, and intended to shape, present American political life. Diverse as are the visions of *The Federalist* that emerge from the new studies, they all have in common the discovery of a text, of a constitutional order, of a founding impulse different from the mechanistic, self-interested, passion-driven system Diamond had described. All agree that *The Federalist* contains a higher or more moral understanding of politics; all react against what they see as the morally objectionable and low, individualistic and selfish tone of *The Federalist* as read by Diamond.

In scholarly discussion often the most weighty issues take the most arcane or even pedantic forms. Here, much of the discussion revolves around what might appear to an outsider as a peripheral issue: who really influenced the founders most decisively? The old answer, which Diamond retained, was John Locke, the English liberal philosopher who originated empiricism and gave the first major defense of proto-capitalism. Recent writers, with the exception of Thomas Pangle, challenge that view.¹⁴ The competitors for Locke's

13. Diamond, *Ethics and Politics*, *supra* note 4, at 93.

14. T. PANGLE, *THE SPIRIT OF MODERN REPUBLICANISM* (1988). Cf. J. DIGGINS, *THE LOST SOUL OF AMERICAN POLITICS* (1984).

place of honor are many: Christianity, the moral sense school of the Scottish Enlightenment, David Hume, the civic republicanism tradition, or even the ancient political philosophers.

Garry Wills's *Explaining America* is one of the earliest and most influential statements of the new wave in *Federalist* studies. The contrast to Diamond is marked, although there is surely no return to Beard either. Instead of the ancient-modern categories which figured so prominently in Diamond's work, Wills deploys a distinction derived from Hume between selfish and social systems. *The Federalist*, says Wills, belongs altogether within the "social system" as pioneered in the work of Francis Hutcheson, ripened by other thinkers of the Scottish Enlightenment, and matured in the thought of David Hume. Directly counter to Diamond's claim, Wills found "the classical zeal for republican virtue . . . at the very heart of *The Federalist*."¹⁵ Following Hume, *The Federalist* neither builds on Lockean individualistic premises nor on purely selfish passions as channeled in institutions. Human beings, rather, are sociable beings intended for society from the outset, as shown by their possession of a moral sense which establishes a natural ethical capacity. "The state of nature" is a great fiction; human beings always live in society.¹⁶ Wills rejects, therefore, Diamond's interpretation of Publius on both the ends and means of political life. *The Federalist* "claims . . . that public virtue is an absolute necessity for the existence of a republic . . ." ¹⁷ Wills finds this version of the founders to be far more supportive of a communitarian vision of America, an America where the natural ties and connections among human beings readily support a "kinder and gentler" nation. Somehow, a vision of community and polity in the minds of Hamilton and Madison seemingly justifies or even effectuates a different kind of politics for us, one far more open to a liberal, redistributivist, and participatory agenda.

Coming from the other side of the political spectrum is David Epstein's *The Political Theory of the Federalist*, which has some points of intersection with Wills, but for the most part veers off in other directions and responds to a somewhat different moral and political agenda. Epstein steps outside the Lockean or liberal approach to politics in his treatment of the theme of republicanism in *The Federalist*. He does not go as far as Wills and deny that the essays contain a major Lockean dimension. He claims, however, that in addition to the Lockean liberal commitment to securing in-

15. G. WILLS, *supra* note 1, at 20.

16. *Id.* at 15, 31, 54, 189-92.

17. *Id.* at 187; *cf. id.* at 192.

dividual rights, the founders were also committed to republican life as understood in the tradition of civic republicanism.¹⁸ That tradition has been well described as follows:

Part Aristotle, part Cicero, part Machiavelli, civic humanism conceives of man as a political being whose realization of self occurs only through participation in public life, through active citizenship in a republic.¹⁹

According to Epstein, this republican life was not merely (although it was partly) valued by the founders because it served as a means to their liberal ends. Republicanism was also a vehicle of true nobility in the political universe of *The Federalist* and for a way and sphere of life—politics and the public—higher than the system of selfish passions contained in liberal markets or found in Diamond's reading of *The Federalist*. Epstein finds the book rooted instead in "a psychology which understands the specifically political, rather than economic, impulses of man."²⁰ Political life stands as an ennobling end in itself, both for leaders and for people. Epstein is less concerned with the communitarian than with the ennobling aspects of the older republicanism.

Like other recent scholars Epstein seems genuinely pleased to discover a dimension of the seminal work of the American constitutional order which transcends liberalism. Today, many people worry that American public life has atrophied to the point that the most political event we experience, the presidential election, has become merely an extension of our most private acts of consumption; when candidates are marketed and voters act like busy shoppers; when our private lives seem almost entirely given over to the comfort-seeking pursuits Nietzsche vilified as those of "the last man." Many scholars see these results not as a merely fortuitous conjunction of forces, but as the natural working out of the original impulses of Lockean liberalism. At such times evidence is more than welcome that the American tradition contains within it—right at its birth, even if as an unrealized seed—an alternative to this debased political fate. It is as though the authentication of these higher moral qualities by Hamilton and Madison guarantees their present and future existence for us.

This gaggle of new approaches to *The Federalist* raises two difficult questions. First, is one or another of these different versions of a politics "beyond" Lockean liberalism in fact to be found in *The Federalist*? And second, what is the significance of the search, does it make sense? As is true of most difficult questions, the answer to

18. D. EPSTEIN, *supra* note 1, ch. 4.

19. Kramnick, *Republican Revisionism Revisited*, 87 AM. HIST. REV. 630 (1982).

20. EPSTEIN, *supra* note 1, at 6.

the first is complex: both yes and no. As Charles Kesler says in his volume, the more recent interpretations show Diamond to have been "one-dimensional."²¹ *The Federalist* does contain much discussion of virtue and other moral notions; its authors do not seem to consider these as mere chimeras; they do seem to find a place for them in political life, both in terms of the ends and the means of politics. They do seem concerned with republicanism for reasons that go beyond its instrumental service to the liberal end of protecting rights. As Epstein emphasizes, they relate the commitment to republicanism to the desire to vindicate the honor of human nature, and thus view politics as an honorable activity in its own right and human nature as itself honorable.²² They therefore do not embrace the Hobbesian view of human nature attributed to them by interpreters like Diamond.

Yet these scholars go too far. Wills, for example, rightly sees the tracks of David Hume in *The Federalist*, but misinterprets the connection by overstating the continuity between Hume and the moral sense school, and exaggerating the distance between Hume and Locke. (Hume after all was a crucial link between Locke and Adam Smith.) Certainly when Wills finds that *The Federalist* "claims that public virtue is an absolute necessity for the existence of a republic . . .," he is imposing views on the text which the text will not support. In the famous *Federalist No. 10*, for example, Madison insisted that "neither moral nor religious notions can be relied on . . ." In the equally well-known *Federalist No. 51*, Madison defended the Constitution's reliance on devices of self-interest to check self-interest, ambition to check ambition, with the observation that: "It may be a reflection on human nature, that such devices should be necessary to control the abuses of government. But what is government itself, but the greatest of all reflections on human nature? If men were angels, no government would be necessary."

Similar difficulties plague Epstein's attempt to enoble *The Federalist's* vision by placing it in a tradition which sees political life itself as the most characteristic expression of human dignity. Epstein's interpretation runs afoul of features of their text (and their Constitution) of which he is himself aware:

If the political liberty men have in popular government is important to them for its own sake . . . , then there must be something about the exercise of political authority which men find satisfying. Yet the type of popular government recommended by

21. Kesler, *Federalist 10 and American Republicanism* in *SAVING THE REVOLUTION* 18 (1987).

22. D. EPSTEIN, *supra* note 1, at 119-20.

The Federalist is one in which the people do not themselves exercise political authority but merely elect particular men to exercise authority.²³

Indeed, *The Federalist* defended as a great good the exclusion of the people from direct involvement in government. The founders laid the theoretical and practical groundwork for the extremely large mass democracy of the twentieth century, and never once, to my knowledge, expressed regret over the loss of opportunities for *political* life that this entails. At every turn they saw these apparent losses as gains.

Typical of what might appear to be *The Federalist's* almost schizophrenic approach to the issue of virtue is Madison's *Federalist No. 57*. That essay contains the statement most clearly supportive of the post-Diamond interpretations: "The aim of every political constitution is or ought to be first to obtain for rulers men who possess most wisdom to discern, and most virtue to pursue the common good of the society." Yet after a few paragraphs of analysis, Madison concluded that not "virtue," but "the situation" of the rulers must be looked to in order to attach them to "the common good." That was to be done via appeal to "motives of a more selfish nature." Perhaps every constitution ought to aim at virtue, but Madison did not believe it wise to act as if virtue were often achieved. Virtue is certainly not the center of *The Federalist's* political science.

The founders seem to come very close to Hume on this vexed question of virtue in politics. He considered it a "just political maxim, that every man must be supposed a knave," yet he also thought it "strange, that a maxim should be true in politics which is false in fact."²⁴ The founders' retreat from morality was not based on moral skepticism, as might be the case today, but on an overwhelming sense of virtue's political inefficacy. They had no doubts of the reality and content of virtue, but many doubts as to its reliability. For the most part, they judged, it was prudent to look elsewhere.

It seems fair to conclude, then, that the new scholarship is not viable. Their verdict against Diamond—"terribly one-dimensional"—applies more or less to their own work.

Now some would say that the problem lies in the project itself—the turn to *The Federalist* with an eye to finding something in it for us. But why else are we interested in these old books if they

23. *Id.* at 97.

24. Hume, *Of the Independency of Parliament*, in *ESSAYS: MORAL, POLITICAL AND LITERARY* 42 (1973).

cannot tell us something about our questions? It is healthy and in any case inevitable that we be driven by our own questioning.

But it is not inevitable that we be driven by our own answers. Useful, instructive, even entertaining as much of the recent scholarship on *The Federalist* is, nonetheless it suffers from the vice of coming to the text with current answers as well as current questions. That vice leads most of the recent scholars to slight the real point of value in *The Federalist*, the intensely wise treatment of the nature and operation of political institutions. That may not speak to the moral concerns which animate these studies, but we can learn much of great value about the operation of our political institutions from them, and even more by learning to think like them.

Just one small example: the point is frequently made that the purpose of the separation of powers is to check and balance, to stalemate the exercise of power. But a richer appreciation of *The Federalist* would lead us to see what else the separation of powers is for. As Madison insisted in *Federalist No. 37* the requirements of politics are many, complex, and in tension with each other. He gives as examples the needs for safety, stability and energy. A good political system must provide all three, but the institutional arrangements which supply one counteract the others. The solution was a system of different institutions, composed and operating on different principles, each of which could make its special contribution to the whole by providing one or another of the requisite "desiderata" (to use a favorite term of Madison's).

The sad fact is that the political science of *The Federalist* has been forgotten to a large degree. As Dennis Mahoney has shown, Progressivism was largely responsible for this.²⁵ The recovery of *The Federalist's* political science would be a great step forward in our ability to think clearly about political institutions, and would counteract our tendency to excessive moralizing.²⁶ Any number of issues, from the role of the presidency to the internal operations of Congress could be understood better if we went to school with Messrs. Hamilton, Madison, and Jay.

If one of their chief contributions would be to oppose our tendency to moralize in the wrong times and places about politics, then the current spate of scholarship mostly focusses in the wrong place, and draws the wrong "lessons." This is not to say that the moral

25. Mahoney, *The Separation of Powers: A Constitutional Principle in Contemporary Perspective*, in E PLURIBUS UNUM: CONSTITUTIONAL PRINCIPLES AND THE INSTITUTIONS OF GOVERNMENT 23 (S. Thurrow ed. 1988).

26. Cf. Zuckert, *Toward an Agenda for the Third Century*, in E PLURIBUS UNUM, *supra* note 25, at 34.

concerns of our times or our scholars are illegitimate. It just turns out *The Federalist* is not the place where these are pursued in ways that can be very helpful to us, nor do these issues provide an ingress into *The Federalist*. Great as *The Federalist* is (and it is great—it is the only series of newspaper articles, after all, to deservedly earn a place among the “Great Books of the Western World”), nonetheless it does need to be supplemented. *The Federalist* was certainly not intended to be a comprehensive work of political philosophy. Its limited aim was to defend the Constitution before the country, its agenda to a large degree set by the criticisms, levelled against the Constitution by its opponents.²⁷ There were, in other words, limits which even its authors would concede; there were, perhaps, other limits of which they were less aware.

The Federalist can usefully be supplemented in a number of different ways. The moral foundations of democratic politics are more thoroughly explored, for instance, in Alexis de Toqueville’s *Democracy in America*. The underlying but mostly unexplored moral presuppositions of *The Federalist*’s political perspective are explored via the philosophy of John Locke in Thomas Pangle’s excellent *The Spirit of Modern Republicanism*. Within the writings of the framers themselves, other texts are richer fields for exploring the moral themes our scholars wish to pursue. For example, the founding generation understood political right in terms of the philosophy of natural rights. This philosophy, Morton White irrefutably demonstrates, was shared by the authors of *The Federalist* but not much explained or defended there.²⁸ Other founding writings are better on this issue, especially those of Thomas Jefferson.

So how does *The Federalist* answer George Bush’s question about the moral quality of American political life? Hardly at all. The book certainly does not deny our aspirations to a moral politics, but its merits do not lie in its analyses of what this involves or in its prescriptions for how to get it. Indeed, if anything, *The Federalist* is an extended set of reflections on how we might get by with relatively slight amounts of public virtue in leaders or people. Perhaps its authors might say the lesson we should take from their book in our currently troubled world is: be not anxious. But we are a nation with a Puritan heritage, and a healthy if intermittent moral sensibility, so this is not a message we are likely often or lastingly to accept. Let us instead, then, draw a more modest conclusion.

Where the authors of *The Federalist* focussed their attention,

27. FURTWANGLER, *THE AUTHORITY OF PUBLIUS* (1984) shows some sensitivity to the limits of *THE FEDERALIST*. See ch. 1.

28. WHITE, *supra* note 1, chs. 3, 11-13.

they were unsurpassable. But they did not address, much less answer, every question we raise, and their writings surely do not contain every one of our pet solutions to our present political ills. Yet if we pay them the right kind of attention, we will find there is much, if not everything, in it for us.