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Book Review: The Federalist: Design for a Constitutional Republic. by George W. Carey.

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choice theory that was deeply suspicious of the regulatory process, inclined to see it as favoring special interests at the expense of the public, and willing to use judicial power to strike down the resulting legislation even if there was no identifiable clause in the Constitution that forbade the legislation at issue.

The effect of this interpretation is to make the *Lochner* era look much more creative and constructive than reactionary. Probably the most common explanation of *Lochner* other than the "legal formalism" explanation is Holmes's explanation that it was a reactionary period in which conservatives responded to socialism, the labor movement, and Progressive politics by ignoring their concerns and aligning themselves with the propertied interests to which the new movements were opposed. However, the movement began to take on a reactionary cast because the free market principles that it professed were challenged by a Progressive regime whose confidence in the equanimity of the market was very much in doubt. As Gillman puts it, the ideology of substantive due process was fairly inclusive, or egalitarian in the early nineteenth century, but as the market increasingly produced maldistributions of wealth it became increasingly exclusive. In that sense, the "story of the *Lochner* era is a story about judicial fidelity to crumbling foundations, not judicial infidelity to recoverable foundations."

This is a readable book that will enlarge any reader's view of the *Lochner* era, even those who know their constitutional history well. It makes clear that, for all that has been said of the period, there are still worthwhile things to say.

THE FEDERALIST: DESIGN FOR A CONSTITUTIONAL REPUBLIC. By George W. Carey.¹ Champaign: University of Illinois Press. 1989. Pp. 181. \$22.95.

*Michael P. Zuckert*²

George Carey has been publishing essays on *The Federalist* at least since 1976, and therefore his recent book is rather like a nicely aged wine or cheese. The comparison is apt, for the book has the kind of delicacy and sureness of touch we associate with a high quality burgundy: smooth and flavorful, without being assertive, sharp-edged, or flashy. In a word, Carey's is a mature study from which all who are interested in *The Federalist* can learn something.

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Some readers, however, may find the book slightly disappointing, precisely because of the aging process which produced it. Carey has addressed it to a body of literature, a set of issues and authors which are now at least a generation old in *Federalist* studies. He is very concerned, for example, to rebut Charles Beard, and Beard's more up-to-date adapter Robert Dahl, author of the more than thirty-five-year-old *A Preface to Democratic Theory*. The most recent writer who plays a serious part in Carey's thinking is Martin Diamond, whose major writings on *The Federalist* appeared in the early to mid-1960s. Carey hardly takes note of the important recent work by David Epstein or Lance Banning; he takes even less notice of the less valuable but widely remarked work of Garry Wills or Morton White.

Carey's no doubt would have been a better book had it been both connected to the more recent literature, and had it picked up on some of the more recent debates concerning classical republicanism and civic virtue, topics which he treats in terms rather foreign to current discussions. Nonetheless, the many virtues of the study far outweigh this slight failing of currency, and, without explicit address, he does supply materials from which the attentive reader could very well construct Carey's reply to scholars like Epstein or Wills.

Like Martin Diamond before him, Carey finds the general line of interpretation set off by Charles Beard to be fundamentally unsound; unlike Beard, Dahl, and many others, Carey rejects the notion that the political science of the authors of *The Federalist* (and their constitution) was anti-democratic and aimed at producing stalemate for the sake of protecting minorities of wealth and status. Although he spends much ink attempting to distance himself from Diamond, in the main his conclusions parallel the latter's: Publius was committed to republicanism, understood essentially as majority rule coupled with respect for the legitimate rights of minorities; to separation of powers, for the sake of maintaining rule of law, not hamstringing majority government; to federalism only to a degree; and to limited government with the Supreme Court playing a legitimate but circumscribed role in enforcing the Constitution as a special kind of fundamental law.

On each of these main topics Carey has instructive things to say. He comes closer to recapturing the authentic Madisonian doctrine of the extended republic than almost anybody who has written on this much-written-upon topic. Implicitly, he responds to the quite indefensible version of the extended republic argu-

ment put forward by Wills, and should help clarify some of the confusion the latter has caused. Carey has performed a very great service in recapturing the rule-of-law perspective out of which *The Federalist* doctrine of separation of powers emerged. (In my opinion this is the strongest part of the book.) His treatment of federalism is sober, tending in Diamond's direction of concluding that Publius was at best a lukewarm defender of federalism, with no principled objections to a consolidated national union under the constitution. His treatment of the role of the judiciary speaks intelligently, if not entirely decisively, to current debates about the Courts and judicial interpretation, taking a moderately conservative but firm position in favor of a judicial role.

Transcending the excellence of the specific discussions of Carey's four main topics are two qualities of this book requiring separate mention. Unlike so much recent writing on the American founding—and on so many other things—this is not “result-oriented scholarship.” Carey takes it for granted that it is possible to understand a text as its authors did and not merely find in it echoes and reflections of one's own hopes, fears, and political preferences. Like most political scientists and unlike most historians, Carey begins with the premise that *The Federalist* may still be relevant to us as a work of political analysis, but he does not insist it cough up his or anyone's favorite answers to current political questions. In aim, tone, and integrity, this is what scholarship should be.

Carey is also willing to admit there may be limits to this book he so admires. *The Federalist* was written, after all, in a specific political context and was not intended as a comprehensive work of political philosophy. Especially interesting are his discussions of what it takes for granted—a constitutional morality absolutely required for the proper operation of the constitution Publius was defending but nowhere explicitly made a theme of Publius's discussion, a morality, moreover, which the constitutional scheme defended by Publius nowhere provided the means for inculcating. Similarly, Carey maintains Publius assumes with little discussion or provision for its production the existence within the citizenry of a certain level and kind of virtue.

Despite Carey's many strengths, there are still places where this reader has some reservations. For reasons that are partly understandable but not entirely defensible, Carey has decided to restrict himself entirely to the *Federalist*, paying no attention to other sources, even to nearly contemporaneous statements by

Hamilton and Madison. This decision accentuates the various limitations of *The Federalist* that Carey himself identifies. Among other things, it leads him to overemphasize the extended republic argument of *Federalist* 10, for Carey fails to see how that argument was always connected in Madison's mind with a proposal for a congressional veto on state legislation, a proposal which he lost at the convention. *The Federalist* itself, however, never makes this connection explicit. Madison suppressed his own misgivings about the Constitution for its failure to incorporate this veto power, and Hamilton never believed in the extended republic argument in any form. Not seeing the connection to the congressional veto, Carey, like Diamond before him, takes the argument of *Federalist* 10 to point toward a simply nationalist (or, as Madison would say, Consolidationist) constitution as best. Carey thus consistently underplays the federalism of *The Federalist*.

Moreover, there are a few things Carey could have learned from the more recent literature that he has largely ignored. Probably the most serious loss here is David Epstein's fine *The Political Theory of the Federalist*, which, among other things, has a richer presentation of Publius's science of political institutions than Carey does. At times Carey's concern to respond to the Beard-Dahl strain of political science limits somewhat too narrowly the range of questions and types of analyses Carey undertakes. Epstein better brings out, for example, how the different institutions are structured to supply political wants beyond maintenance of the separation of powers itself.

If I could have one wish that Carey had to fulfill before he completed his book, it would be for a more explicit and forthcoming account of his relationship with Diamond. He makes clear from time to time his reservations about various points in Diamond's analyses, but he is much less clear about where he and Diamond agree. He seems most eager to distance himself from Diamond's view of *The Federalist* as presenting a "new science of politics" of the modern, i.e., post-Machiavellian type. Carey is reluctant to endorse Publius as a complete modernist, as is clear in his emphasis on the unstated "constitutional morality" and on the nearly unstated "citizen virtue," both of which he sees as central to Publius's political science, but less clearly part of post-Machiavellian modern political philosophy.

Some of these quibbles are more than mere quibbles, but this nonetheless is a book worthy of taking its place as one of the two or three chief secondary sources one really ought to read on

The Federalist. It's mature and mellow—even the bouquet, even the cork reward the discerning palate.