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The Political Theory of the *Federalist* and The Authority of Publius

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THE POLITICAL THEORY OF THE *FEDERALIST*. By David F. Epstein. Chicago: The University of Chicago Press. 1984. Pp. ix, 197. \$22.

THE AUTHORITY OF PUBLIUS. By Albert Furtwangler. Ithaca, N.Y.: Cornell University Press. 1984. Pp. 148. \$14.95.

INTRODUCTION

The Federalist Papers are perhaps the most widely researched and discussed work in American political thought.¹ Since their publication in 1787,² legal and political scholars have closely scrutinized the documents, seeking insights into the principles underlying the American polity. These eighty-five essays, originally published in serial form at the height of the debate over ratification of the Constitution, have arguably taken on a greater importance in political thought than ever envisaged by their authors;³ James Madison, Alexander Hamilton, and John Jay.

Two new books, *The Political Theory of The Federalist*, by David F. Epstein,⁴ and *The Authority of Publius*, by Professor Albert Furtwangler,⁵ are recent additions to the long list of works examining *The Federalist*. Despite their common subject matter, the two books have largely irreconcilable premises, themes, and conclusions. Mr. Epstein's book is primarily an interpretive essay in the tradition of Albert Bloom⁶ and Herbert Storing.⁷ Professor Furtwangler, on the other hand, seeks to dispel myths about *The Federalist Papers* which

1. See, e.g., D. ADAIR, *FAME AND THE FOUNDING FATHERS* (1974); C. BEARD, *THE ENDURING FEDERALIST* (1959); C. BEARD, *AN ECONOMIC INTERPRETATION OF THE CONSTITUTION OF THE UNITED STATES* (1935) [hereinafter cited as C. BEARD, *ECONOMIC INTERPRETATION*]; *THE FEDERALIST* (J. Cook ed. 1961); Diamond, *Democracy and The Federalist: A Reconsideration of the Framers' Intent*, 53 AM. POL. SCI. REV. 52 (1959); Mason, *The Federalist — A Split Personality*, 57 AM. HIST. REV. 625 (1952); Wright, *The Federalist on the Nature of Political Man*, 59 ETHICS 17 (1949).

2. The first *Federalist* paper appeared on October 27, 1787, in the *Independent Journal* — a New York newspaper. *THE FEDERALIST PAPERS* viii (C. Rossiter ed. 1961) [all citations to *The Federalist* are to this edition]. Later papers appeared in various other New York newspapers. A. FURTWANGLER, *THE AUTHORITY OF PUBLIUS* 51-53 (1984).

3. Professor Furtwangler points out that the papers were a campaign effort. Neither Hamilton nor Madison intended that they become lasting political doctrine. A. FURTWANGLER, *supra* note 2, at 81-97.

4. Mr. Epstein formerly taught at the New School for Social Research, Graduate Faculty. He is currently an analyst for the Office of the Secretary of Defense.

5. Professor Furtwangler received his undergraduate degree from Amherst College and his Ph.D. from Cornell University. He formerly taught at Linfield College and the University of Chicago and was a Visiting Fellow at Yale University. Currently he is an associate professor of English at Mount Allison University.

6. See *THE REPUBLIC OF PLATO* 307-436 (A. Bloom trans. 1968).

7. See H. STORING, *WHAT THE ANTI-FEDERALISTS WERE FOR* (1981).

have resulted in the papers' having more importance than either the circumstances warrant or the authors intended.

I. ANALYSIS OF UNDERLYING THEMES

The thrust of Mr. Epstein's book is relatively straightforward. He purports to explain how and why the authors of *The Federalist* planned to combine the political tradition of Lockean liberalism with a strictly republican form of government. This is no minor task, given that it took John Jay, Alexander Hamilton, and James Madison eighty-five essays covering over 500 pages of text to expound their views. Mr. Epstein's approach toward the central theme of *The Federalist* is slightly different from most previous works. Instead of focusing on man's "private economic interests" as the driving force toward republicanism in *The Federalist*, Epstein argues that man's noneconomic nature necessitates and justifies the energetic but stable republic designed by the Framers. Thus, Mr. Epstein's book is a commentary on *The Federalist* from a humanistic as opposed to an economic perspective.⁸

Thankfully, Mr. Epstein does not attempt to discuss each individual essay. Instead, he divides his book into seven chapters thematically following the original papers. The first two chapters discuss the ends of and the need for a republican form of government. After a lengthy discussion of *The Federalist* No. 10 in chapter 3 (pp. 59-110), Epstein turns to volume 2 of *The Federalist Papers* for the remainder of the book. Chapter 4 (pp. 111-25) discusses the relationship between man's sense of honor, his self-interest, and a republican form of government. Chapters 5-7 (pp. 126-47) outline the structural devices suggested by the authors to insure a successful, energetic, but limited republican government.

The internal structure of the individual chapters reflects the author's task. In each chapter, the author quotes extensively from the papers in an effort to explore the depths of the problems facing the Framers and the ingenuity of the structural solutions incorporated in the new constitution to solve those problems. Locke, Hobbes, Montesquieu, and other political philosophers predating the papers are quoted extensively to explore how the newly designed regime incorporated previous liberal thought. Interspersed with this extensive background material are the author's occasional arguments that the purpose of *The Federalist* was to design a government that could control not only man's economic nature but also his political nature.

Epstein's first chapter (pp. 11-34) is indicative of the general tone of the remainder of the book. Here Epstein attempts to analyze how the Framers responded to the objections of David Hume that mankind

8. For an economic perspective, see C. BEARD, *ECONOMIC INTERPRETATION*, *supra* note 1.

is unable to form a government from "reflection and choice" because it is forever preempted by "force and accident" (p. 14). The ability to form a government based on "reflection and choice," Epstein argues, is a "point of honor" for the authors of *The Federalist* (p. 15). To overcome the powers of "force and accident" that were said to have been the starting point for most regimes, however, requires "that America choose to be forceful" in order to combat both internal and external powers seeking despotic control. But such force too often requires "standing armies and stronger executives" (p. 18). This combination, Epstein argues, leads to force and despotism to avoid force and despotism.

However, America is fortunate. Geographic isolation, the "profound peace" of the time, fertile lands, and potential for a diverse economy put it in the unique position of being able to choose its own government without having had to resort to force (p. 19). Epstein concludes:

America's accidental advantages in choosing her own government suggest that America can decide what societies of men are really capable of in only a limited way. If we fail despite our very favorable circumstances, the conclusion must be that men cannot establish government by reflection and choice. If we succeed, our reliance on lucky accidents suggests that a similar choice will not always or often be available to other societies of men. [P. 21.]

By incorporating the works of Locke, Hume, and Hobbes, along with quotations from *The Federalist Nos. 2, 3, 4, 6, 8, 41, 43, 70 and 85*, Epstein proposes to show how America's particular circumstances lent themselves to the formation of government by choice. The rest of the book makes similar use of *The Federalist* and its predecessors.

Professor Furtwangler, on the other hand, does not attempt to make a substantive study of the themes, principles, or conclusions of *The Federalist*. Instead, the central theme of his work is that scholars and the public accord *The Federalist* too much respect. Many authors (including Mr. Epstein) have approached *The Federalist* with a kind of reverence bestowed only on the greatest philosophical works. The papers are now considered classics. But, "the closer one looks at these papers," Furtwangler argues, "the more they reflect a timely approach to a very particular occasion." To demonstrate this point, Professor Furtwangler challenges four basic misconceptions about *The Federalist*, concluding that, while *The Federalist* does deserve respect, the work should not be accorded the weight and importance given to it by modern interpreters.

The misconception the author finds easiest to attack is "that the Federalist Papers directly influenced ratification of the constitution" (p. 19). It could not have been so, he argues, because the ratification process was far "more complex than this view allows" (p. 19). Given the high illiteracy rates of the time, limited circulation, limited appeal,

and hostile attitudes, Furtwangler concludes, "the Federalist could hardly rival other major forces in the ratification contests" (p. 21).

The author as easily dismisses the misconception that *The Federalist* represents the views of Hamilton and Madison. Given that these two great politicians had many ideological disagreements (pp. 23-32), it would have been impossible for them to produce a cohesive work if they had expounded their personal views. Instead, "[t]he Federalist essays catch them in a false position, supporting [the Constitution] absolutely and so reasoning against their own deepest convictions" (p. 25).

Nor do the papers represent the views of the Framers, Furtwangler argues (pp. 32-34). Though he finds this misconception more appealing than the previous two, he rejects it, stating that "[t]he deepest problem with this view is that it comes close to confusing the *Federalist* with the Constitution itself" (p. 33). The Constitution — not *The Federalist* — represents the views of the Framers.

The final misconception is that these papers "contain a rigorous political philosophy" (p. 39). Many of the works in *The Federalist* begin from this premise. The papers argue "from axioms and then draw deductions from arguable premises" (p. 40). In that sense, they contain philosophy. But in a true Aristotelian/Platonic sense, they do not. Furtwangler asks whether *The Federalist* "expounds a systematic way of thinking about life," whether it "promotes a doctrine which can be taught and elaborated," or whether "it contains far-reaching reflections on the universe and man's place within it" (p. 40). He believes all three questions must be answered negatively. Therefore, the view that *The Federalist* does contain a rigorous political philosophy seems absurd, and yet "it emerges explicitly in many approaches" to *The Federalist* (p. 40).

A common feature of all these misconceptions is that "they regard [the *Federalist*] mainly as a finished book" (p. 43). This is not so, argues Furtwangler. "To understand the design of *The Federalist*, one has to look not only at its first appearance in New York newspapers, but also at the background from which it emerged" (p. 45). Such an inspection reveals a work designed for a particular purpose — to advocate ratification of the Constitution — and not as a lasting political statement. *The Federalist*, in short, was merely campaign literature. It cannot stand as the definitive statement of American politics.⁹

II. *THE FEDERALIST NO. 10* — CONFLICTING VIEWS

These two books have radically different conclusions and purposes.

9. But see, e.g., D. EPSTEIN, *THE POLITICAL THEORY OF THE FEDERALIST* 3 (1984) (*The Federalist* "has been 'justly supposed to be entitled to great respect' by those engaged in 'expounding the constitution'" (quoting *McCulloch v. Maryland*, 17 U.S. (4 Wheat.) 316, 433 (1819))).

Epstein is a traditionalist in the sense that he views *The Federalist* as the culmination of all liberal political thought, designed to be a lasting document that spoke to both the political debate of the time and to future generations of political philosophers.¹⁰ Professor Furtwangler is the revisionist; he attacks the principles relied on by generations of *Federalist* commentators. His book questions the foundation underlying Mr. Epstein's exhaustive analysis. Furtwangler does not argue with the substance of Epstein's analysis, but rather suggests that any such analysis is unjustified.

Each author's respective treatment of *Federalist no. 10* reflects these differences. For Epstein, *Federalist no. 10* is the central essay in the papers, linking nos. 1-14's discussion of the need for strong government with the essays describing how to form such a government. He accepts *The Federalist no. 10* as a succinct analysis of the problems of passions and faction facing the infant American republic. From this starting point, Epstein analyzes *The Federalist no. 10* virtually line by line, rooting out subtleties and distinctions inherent in the work. For example, after quoting Madison's definition of a "faction,"¹¹ Epstein delves into an involved discussion of whether all current interest groups and lobbyists are factions or whether they "go too far and try to profit at the expense of the whole" (p. 65). A similarly involved discussion follows of how factions can violate either fundamental rights or act in a manner contrary to the quasi-utilitarian notion of the "aggregate interest of the community" (p. 64).

Professor Furtwangler does not deny that there are subtleties and distinctions inherent in *Federalist no. 10*.¹² But such a meticulous analysis overstates the importance of *no. 10*. Furtwangler criticizes such analysis as being based on the self-fulfilling prophecy that *The Federalist no. 10* is somehow deeply engraved in the minds and hearts of America. The importance of *no. 10* was not in its explanation of the behavior and activities of men which made a large extended republic desirable. Rather, *The Federalist no. 10* has been given independent

10. As Epstein states:

The Federalist's own standards suggest that its argument must be judged not only for its appropriateness to the circumstances of 1787, but in light of political history and human nature generally. To recommend a form of government for America's "remote futurity," and even for the "esteem and adoption of mankind" is to engage in an argument about political theory of continuing relevance to those who have lived with that government, and to mankind in general.

D. EPSTEIN, *supra* note 9, at 1-2 (citation omitted).

11. By a faction I understand a number of citizens, whether amounting to a majority or minority of the whole, who are united and actuated by some common impulse of passion, or of interest, adverse to the rights of other citizens, or to the permanent and aggregate interests of the community.

THE FEDERALIST PAPERS, *supra* note 2, at 78.

12. "The apparent beauty of the paper is its self-contained lucidity, its open, specific, compact discussion of a palpable problem before ordinary citizens. But any close analysis reveals intellectual problems and intellectual subtleties." A. FURTWANGLER, *supra* note 2, at 137.

importance only recently by authors striving to legitimize the American form of government.¹³ Furtwangler argues that scholars have been reading this paper out of context, as a cohesive work. It is part of a whole work — *The Federalist* — and the authors never intended *no. 10* to be a concise and coherent statement.

III. · CRITIQUE

Mr. Epstein has obviously put a great deal of time and thought into his analysis of *The Federalist*. The book is well-researched and extensively annotated. However, those readers who manage to slog their way through the book's exhaustive, intricate arguments come away with two thoughts. First, the reader cannot help but wonder whether Mr. Epstein is reading too much into the essays. His two-page long digression into the definitions of particular words such as "faculties" (pp. 78-80), lengthy and overwrought use of analogy,¹⁴ and footnote arguments as to the placement of a particular comma in the original text¹⁵ border on the pretentious, if not the annoying.

Second, the reader leaves Epstein's book with the uneasy feeling that he has seen everything the book has to offer somewhere before. In fact, he has — in the body of the original eighty-five papers. At its most fundamental level, Mr. Epstein's book is nothing more than an in-depth analysis of material that has been more than adequately discussed before. The newcomer to political philosophy would be better off reading the actual papers and the papers' predecessors. *The Political Theory of the Federalist* is one man's discovery of the meaning of *The Federalist*. Such a discovery is perhaps better left to the individual reader of the papers.

Professor Furtwangler's book, on the other hand, suggests a controversial and provocative approach to *The Federalist*. Furtwangler mixes historical perspective with a fair reading of the essays to derive a novel conclusion — that *The Federalist Papers* have commanded too much respect.

The Authority of Publius aims at an audience different from that of *Political Theory*. *Publius* avoids the learned pretentiousness of Epstein's piece. For this reason, a reader not well-versed in *The Federalist* or American constitutional history will be able to comprehend *Publius*. Thematically, and in its delivery, Furtwangler's work is straightforward. The reader will appreciate the work's simplicity and

13. Furtwangler makes this clear in his conclusion: "Instead of justifying a new government on the basis of hard, cold logic and high principle, it now explains and symbolizes a government so long accepted as to be worn smooth, worn into the flesh and blood of generations." A. FURTWANGLER, *supra* note 2, at 144-45.

14. See, e.g., D. EPSTEIN, *supra* note 9, at 67-68 (analogizing the factionalism permitted by freedom to air that makes plant and animal life possible).

15. See, e.g., *id.* at 74 & n.41.

generally well-written, well-organized structure. However, a cautious or a scholarly reader may desire more documentation and elaboration. *Publius* is short — 148 pages — and often seems sparse in authority. But this criticism falls away when one considers the tone and audience of the book. *Publius* is written to provoke the reader, not to inundate him.

Much thought has gone into both of these books. Both the casual reader and the student of *The Federalist* will appreciate Professor Furtwangler's fresh, provocative approach. Mr. Epstein's book, on the other hand, is too detailed and difficult for the beginner and too repetitive of previous works for the political theorist or student.