

# Michigan Law Review

---

Volume 87 | Issue 6

---

1989

## Philosophy, *The Federalist*, and the Constitution

Edward J. Sebold

*University of Michigan Law School*

Follow this and additional works at: <https://repository.law.umich.edu/mlr>



Part of the [Constitutional Law Commons](#), and the [Legal History Commons](#)

---

### Recommended Citation

Edward J. Sebold, *Philosophy, The Federalist, and the Constitution*, 87 MICH. L. REV. 1566 (1989).

Available at: <https://repository.law.umich.edu/mlr/vol87/iss6/31>

This Review is brought to you for free and open access by the Michigan Law Review at University of Michigan Law School Scholarship Repository. It has been accepted for inclusion in Michigan Law Review by an authorized editor of University of Michigan Law School Scholarship Repository. For more information, please contact [mlaw.repository@umich.edu](mailto:mlaw.repository@umich.edu).

PHILOSOPHY, *THE FEDERALIST*, AND THE CONSTITUTION. By Morton White. New York: Oxford University Press. 1987. Pp. xi, 273. \$29.95.

Imagine a 200-year-old tree symbolic of the United States government. The trunk of the tree generates its branches, just as the text of the Constitution engenders the American form of national government. The roots of the tree draw support from the soil. Similarly, *The Federalist Papers*, the roots of the Constitution, drew support from the rich philosophical milieu of the eighteenth century.

In his new book, Professor Morton White<sup>1</sup> explores this philosophical soil, from which the authors<sup>2</sup> of *The Federalist* culled arguments favoring the Constitution. White's exploration focuses on the substantive philosophical claims Publius proffered in support of the Constitution, and on the philosophical procedure Publius employed to arrive at his substantive conclusions.

As White began his study, he faced two difficulties. First, a lack of literature presenting a systematic view of *The Federalist* required White to conduct extensive research. Of course, that lack of literature also allows White to proclaim the uniqueness of his work.<sup>3</sup> Second, presenting the philosophy of *The Federalist* was "peculiarly difficult" because Professor White sought "to extract a philosophy" (p. vii) from a work concerned not with advocating a particular philosophy but rather devoted to the more practical purpose of rallying support for the ratification of the United States Constitution. In this capacity, *The Federalist* "defended some very practical detailed propositions in law and politics."<sup>4</sup>

---

1. Professor, The Institute for Advanced Study, Princeton, New Jersey. His current book is a sequel to M. WHITE, *THE PHILOSOPHY OF THE AMERICAN REVOLUTION* (1978), but "a sequel which may be read and understood by those who have not read its predecessor." P. vii. White links his current work with its predecessor in chapter 13, entitled "*The Federalist* and the Declaration of Independence Compared." The chapter concludes that "there is no fundamental philosophical difference between the Declaration and *The Federalist*." P. 211.

2. Alexander Hamilton, James Madison, and John Jay authored *The Federalist Papers*. "Publius" was their collective pseudonym. "*The Federalist*, addressed to the People of the State of New York, was occasioned by the objections of many New Yorkers to the Constitution which had been proposed on September 17, 1787, by the Philadelphia Convention." *THE FEDERALIST* xi (J. Cooke ed. 1961).

3. "[S]o far as I know, no other philosopher has ever presented a synoptic view of the major philosophical ideas in *The Federalist*." P. vii. White concedes that other authors have written on individual strands of philosophy in *The Federalist*. See, e.g., D. EPSTEIN, *THE POLITICAL THEORY OF THE FEDERALIST* (1984); D. ADAIR, *FAME AND THE FOUNDING FATHERS* (1974); Wright, *The Federalist on The Nature of Political Man*, 59 *ETHICS* 17 (1949). In general, White's endnotes are a rich source of information on the individual philosophical elements that influenced Publius.

4. P. 3. For an extended argument that *The Federalist* was merely campaign literature designed for the practical purpose of ratifying the Constitution, see A. FURTWANGLER, *THE*

This practical thrust of *The Federalist* may cause readers to question the validity of White's abstract exploration. White, however, defends his study against the suggestion that *The Federalist* and its authors were influenced only by pragmatism.<sup>5</sup> White argues that the authors "often used language and expressed ideas which must be examined philosophically if we are to understand the authors adequately" (p. 4). For example, because "no pair of words played a larger part in the total argument of *The Federalist*" than "reason" and "experience" (p. 6), probing their philosophical meaning reveals the underlying premises of *The Federalist*.

This need for a theoretical examination motivates White to offer a portrait of Publius' substantive claims in metaphysics, morals,<sup>6</sup> epistemology, psychology,<sup>7</sup> theology, and political technology. Although White paints his portrait with a broad brush, he narrows his strokes by noting that the ideas appearing most frequently in *The Federalist* are descriptive statements of psychology and political technology.

The authors of *The Federalist* presented a psychological theory comparing the strengths of different motives behind individual and group behavior. Publius believed "hostile passions, immediate interests, and partial interests play a greater part in determining human action than do friendly passions, long-term interests, group interests, and reason" (p. 127). For example, Publius stated that "passion never fails to wrest the sceptre from reason."<sup>8</sup> Because reason was a weak motive, Publius feared that members of factions and even members of the governing class would transgress the rational requirements of moral duty. Consequently, Publius was eager to design a system of government to check the tendency of passion to override reason.

Publius turned to political technology to argue for a system of government that enabled positive motives and political opportunities to coincide, while barring congruences between negative motives and political opportunities. Publius' study of political technology led him to advocate a federal system of government. The now-familiar struc-

---

AUTHORITY OF PUBLIUS (1984). For a summary of Furtwangler's argument, see Book Notice, 83 MICH. L. REV. 1088 (1985).

5. P. 5. White quarrels with the work of Charles Beard, who has concentrated on the practical influences surrounding *The Federalist*. See C. BEARD, *THE ENDURING FEDERALIST* (1948); C. BEARD, *AN ECONOMIC INTERPRETATION OF THE CONSTITUTION OF THE UNITED STATES* (1913). White also argues against those who confine philosophy in *The Federalist* to a theory of human nature and a view of history.

6. White believes the ethical foundation of *The Federalist* is underdeveloped in the writings of Publius. As a result, in chapter 13 he compares the moral systems of *The Federalist* and the Declaration of Independence in order to illuminate the ethical framework of *The Federalist*. Pp. 208-27.

7. In the eighteenth century, psychology was a branch of philosophy and thus remains of interest to current philosophers. See pp. 7, 9, 197.

8. P. 114 (quoting *THE FEDERALIST* No. 55, at 374 (J. Madison) (J. Cooke ed. 1961)).

ture based on separation of powers plus checks and balances meshed with Publius' views on human and governmental motivation.

While White presents an in-depth description of the theoretical background for Publius' views on political technology, he stops short of appraising the governmental system produced by the technology. For example, Publius obviously believed that the benefits outweighed the inefficiencies produced by separation of powers. White, 200 years later, is in a position to evaluate critically Publius's belief; instead, White merely describes separation of powers. In general, White leaves to the reader the task of assessing whether the influence of philosophy on Publius produced positive or negative consequences for American government.

According to White, one must analyze the procedure Publius employed to support his substantive claims in order to understand fully the philosophy behind *The Federalist*. Publius' methodology comprised a "philosophical hybrid, an offspring of Lockean rationalism in morals and Humeian empiricism in politics" (p. 227). Like Locke, Publius believed in the existence of self-evident ethical maxims that are established merely by examining relations between ideas. Rationalism in the realm of ethics inheres in Publius' attachment to natural rights. Natural rights, for example the right to pursue one's liberty and happiness, followed from "duties that every man has to his Creator and therefore were not attributed to men in empirical statements but rather in statements . . . regarded as truths which could be axioms or theorems in a demonstrative science of morality . . ." (p. 34). Publius, in contrast to his rationalism in ethics, appealed to history and experience in defense of his political theory and technology. In Number 6, for instance, Publius uses three varieties of experience to support his argument that private passions of leading individuals sometimes produce great national events.<sup>9</sup>

Despite the appearance of a dichotomy between rationalism in ethics and empiricism in political science, White cautions that Publius did not always maintain the distinction between the two methodologies.<sup>10</sup>

---

9. The first variety of experience draws on a general knowledge of human nature: In Number 6 Hamilton writes, "To look for a continuation of harmony between a number of independent unconnected sovereignties . . . would be to disregard the uniform course of human events, and to set at defiance the accumulated experience of ages." *THE FEDERALIST* No. 6, at 28 (A. Hamilton) (J. Cooke ed. 1961). The second variety of experience relies on causal statements about past historical events: For example, "[t]he celebrated Pericles, in compliance with the resentments of a prostitute . . . vanquished and destroyed, the city of the *Samnians*." *Id.* at 29 (emphasis in original). The third variety of experience draws on causal statements about current historical events: "Perhaps however a reference . . . may with propriety be made to a case which has lately happened among ourselves. If Shays had not been a *desperate debtor* it is much to be doubted whether Massachusetts would have been plunged into a civil war." *Id.* at 31 (emphasis in original).

10. In Number 31, for example, Hamilton argues that a political proposition, the necessity of a general power of taxation in the central government, could be established through a Lockean system of self-evident propositions. Hamilton writes, "How else could it happen . . . that pro-

White's cautionary note epitomizes his carefully reasoned analysis, as he refrains from drawing overly broad conclusions or oversimplifying the complexities of Publius' work.

In general, Professor White's book is well designed to guide the reader, especially the busy professor or judge with an interest in philosophy but not an in-depth knowledge, through the philosophy of *The Federalist*. White begins each chapter with a road map, and then divides the chapters into sections with headings designed to summarize the thesis of each section. White also includes a chapter summarizing the philosophy underlying *The Federalist* (ch. 12).

Unfortunately, two features tarnish White's otherwise excellent work. First, while White generally exercises proper judgment on the amount of repetition necessary to make his analysis clear, at times readers with a background in philosophy or even those paying close attention will find White's repetition stifling. Second, White seems to overindulge in truculent criticism of authors with whom he disagrees. The scholarship of Charles Beard<sup>11</sup> serves as White's favorite foil.<sup>12</sup> But while Beard-bashing becomes annoying, it at least advances the argument that philosophy had a major influence on Publius.

Overall, White presents an outstanding exploration of the philosophical soil that nurtured both *The Federalist* and the Constitution. White's primary contribution lies in weaving together the disparate substantive and procedural strands comprising Publius' support for the Constitution. However, the immediate impact of White's book is lessened because he never explicitly informs the reader of the importance and usefulness of her newly acquired understanding of *The Federalist*.

Yet, with a little thought, one can imagine ways in which the lessons of White's book may prove useful to its intended audience. For example, a knowledge of the philosophical justification for the separation of powers doctrine can aid judges, professors, and students in a number of ways. Because scholars often bolster their arguments by citing *The Federalist*,<sup>13</sup> a reader who comprehends the theoretical ra-

---

positions so clear as those which manifest the necessity of a general power of taxation in the government of the union, should have to encounter any adversaries among men of discernment?" THE FEDERALIST No. 31, at 195 (A. Hamilton) (J. Cooke ed. 1961).

11. See *supra* note 5.

12. For example, White does not mince words in arguing against Beard's position that the authors of *The Federalist* were economic determinists:

Madison became attractive to Beard, who seems to have been looking for a way to make his own method of interpreting the Constitution respectable while acknowledging its similarity with the views of thinkers in the Marxian tradition. However, had Beard read *Number 10* with Hume's essay "Of Parties in General" beside him, he might have seen how distorted an interpretation of *Number 10* he was giving.

P. 75 (emphasis in original).

13. See, e.g., Edwards, *Regulating Judicial Misconduct and Divining "Good Behavior" for Federal Judges*, 87 MICH L. REV. 765 (1989) (arguing that Publius' separation of powers theory supports arguments for judicial independence).

tionale for separated powers can evaluate the cogency of a given scholar's position. White's readers will also better understand the theoretical background of recent Supreme Court decisions implicating the separation of powers doctrine.<sup>14</sup> At a minimum, White's book presents *The Federalist Papers*, our "most instructive treatise . . . on federal government,"<sup>15</sup> in a refreshing new light.

— Edward J. Sebold

---

14. See, e.g., *Bowsher v. Synar*, 478 U.S. 714, 722 (1986) (quoting *The Federalist* No. 47 in support of the Court's holding that the Comptroller General's role in exercising functions under the Gramm-Rudman-Hollings Act violated the doctrine of separation of powers); *Morrison v. Olson*, 108 S.Ct 2597, 2622-23 (1988) (Scalia, J., dissenting) (quoting *The Federalist* Nos. 47, 51, and 73 to argue that the Independent Counsel provision of the Ethics in Government Act violates separation of powers).

15. XIX J.S. MILL, *COLLECTED WORKS OF JOHN STUART MILL: ESSAYS ON POLITICS AND SOCIETY* 555 (J. Robson ed. 1977).