

FREEMarket

PUBLISHED 11 TIMES PER YEAR BY THE LUDWIG VON MISES INSTITUTE

THE PROPHETIC ANTIFEDERALISTS

Gary M. Galles

Gary M. Galles is a professor of economics at Pepperdine University (Gary.Galles@pepperdine.edu).

Most school kids are left with the impression that the US Constitution was the inevitable followup to the Declaration of Independence and the war with King George. What they miss out on is the exciting debate that took place after the war and before the Constitution, a debate that concerned the dangers of creating a federal government at all.

Everyone knows about the Federalists who pushed the Constitution. But far less known are the Antifederalists who warned with good reason against the creation of a new centralized government, and just after so much blood had been spilled getting rid of one.

The first of the Antifederalist Papers appeared in 1789. The Antifederalists were opponents of ratifying the US Constitution as it would create what would become an overbearing central government.

As the losers in that debate, they are largely overlooked today. But that does not mean they were wrong or that we are not indebted to them.

In many ways, the group has been misnamed. Federalism refers to the system of decentralized government. This group defended states' rights—the very essence of federalism—against the Federalists, who would have been more accurately described as Nationalists. Nonetheless, what they predicted would be the results of the Constitution turned out to be true in most every respect.

The Antifederalists warned us that the cost Americans would bear in both liberty and resources for the government that would evolve under the Constitution would rise sharply. That is why their objections led to the Bill of Rights, to limit that tendency.

Antifederalists opposed the Constitution on the grounds that its checks on federal power would be undermined by expansive interpretations of promoting the “general welfare” (which would be claimed for every law) and the “all laws necessary and proper” clause (which would be used to override limits on delegated federal powers) creating a federal government with unwarranted and undelegated powers that were bound to be abused.



One could quibble with the mechanisms the Antifederalists predicted would lead to constitutional tyranny. For instance, they did not see that the Commerce Clause would come to be called “the everything clause” in law schools, justifying almost any conceivable federal intervention—because the necessary distortion of its meaning was so great even Antifederalists couldn’t imagine the government could get away with it.

And they could not have foreseen how the 14th Amendment and its interpretation would extend federal domination over the states after the Civil War. But despite that, it is very difficult to argue with their conclusions in light of the current reach of our government, which doesn’t just intrude upon, but often overwhelms Americans today.

Therefore, it merits remembering the Antifederalists’ prescient arguments and how unfortunate is the virtual absence of modern Americans who share their concerns.

One of the most insightful of the Antifederalists was Robert Yates, a New York judge who, as a delegate to the Constitutional Convention, withdrew because the convention was exceeding its instructions. Yates wrote as Brutus in the debates over the Constitution. Given his experience as a judge, his claim that the Supreme Court would become a source of almost unlimited federal overreaching was particularly insightful.

Brutus asserted that the Supreme Court envisioned under the Constitution would become a source of massive abuse because they were beyond the

control “both of the people and the legislature,” and not subject to being “corrected by any power above them.” As a result, he objected to the fact that its provisions justifying the removal of judges didn’t extend to rulings that went beyond their constitutional authority, leading to judicial tyranny.

Brutus argued that when constitutional grounds for making rulings were absent, the Court would create grounds “by their own decisions.” He thought that the power it would command would be so irresistible that the judiciary would use it to make law, manipulating the meanings of arguably vague clauses to justify it.

The Supreme Court would interpret the Constitution according to its alleged “spirit” rather than being restricted to just the “letter” of its written words (as the doctrine of enumerated rights, spelled out in the 10th Amendment, would require).

Further, rulings derived from whatever the court decided its spirit was would effectively “have the force of law,” due to the absence of constitutional means to “control their adjudications” and “correct their errors.” This constitutional failing would compound over time in a “silent and imperceptible manner,” through precedents that build on one another.

Expanded judicial power would empower justices to shape the federal government however they desired, because the Supreme Court’s constitutional interpretations would control the effective power vested in government and its different branches. That would

Copyright © 2006 by the Ludwig von Mises Institute. All rights reserved. ISSN: 1051-4333.

Editor: Jeffrey A. Tucker. Contributing editors: Thomas J. DiLorenzo,
Jeffrey M. Herbener, Robert Higgs, Mark Thornton.
Publisher: Llewellyn H. Rockwell, Jr.

The *Free Market* is published 10 times a year.

Note: the views expressed in the *Free Market* are not necessarily those of the Ludwig von Mises Institute.

Ludwig von Mises Institute, 518 West Magnolia Avenue, Auburn, Alabama 36832-4528
Phone: 334-321-2100; Fax: 334-321-2119; Email: info@mises.org; Web: mises.org

hand the Supreme Court ever-increasing power, in direct contradiction to Alexander Hamilton's argument in Federalist 78 that the Supreme Court would be "the least dangerous branch."

Brutus predicted that the Supreme Court would adopt "very liberal" principles of interpreting the Constitution. He argued that there had never in history been a court with such power and with so few checks upon it, giving the Supreme Court "immense powers" that were not only unprecedented, but perilous for a nation founded on the principle of consent of the governed. Given the extent to which citizens' power to effectively withhold their consent from federal actions has been eviscerated, it is hard to argue with Brutus's conclusion.

Brutus accurately described both the cause (the absence of sufficient enforceable restraints on the size and scope of the federal government) and the consequences (expanding burdens and increasing invasions of liberty) of what would become the expansive federal powers we now see all around us.

But today, Brutus would conclude that he had been far too optimistic. The federal government has grown exponentially larger than he could ever have

imagined (in part because he was writing when only direct, e.g., excise taxes and the small federal government they could finance were possible before the 16th Amendment opened the way for a federal income tax in 1913), far exceeding its constitutionally enumerated powers, despite the Bill of Rights' constraints against it. The result burdens citizens beyond his worst nightmare.

The judicial tyranny that was accurately and unambiguously predicted by Brutus and other Antifederalists shows that in essential ways, they were right and that modern Americans still have a lot to learn from them.

We need to understand their arguments and take them seriously now, if there is to be any hope of restraining the federal government to the limited powers it was actually granted in the Constitution, given its current tendency to accelerate its growth beyond Constitutional limits. ■

See also "The Political Economy of the Antifederalists," by James Philbin; "Empire or Liberty: The Antifederalists and Foreign Policy," by Jonathan Marshall; "Live Free or Separate," by William Watkins; "Taxes and the General Welfare," and "Why the Bill of Rights," by Gary Galles—all on Mises.org.

PREDICTING GOVERNMENT FAILURE

Llewellyn H. Rockwell, Jr.

Llewellyn H. Rockwell, Jr. is president of the Mises Institute and editor of LewRockwell.com (Rockwell@mises.org).

A crucial tenet of the Austrian School is that we cannot know the future with precision. But we are not completely in the dark. We can know that government programs will rarely turn out with the results that their promoters

promise for them. Most of the time, they turn out the opposite.

Austrians often put it this way. Economics does not allow us to make quantitative predictions such as when the business cycle will turn or how high

interest rates will be next year. Economists have no more tools at their disposal than anyone else. All mathematics aside, all attempts at quantitative prediction amount to little more than hunches and guesswork.

However, economics does allow us to make qualitative predictions, such as: a price ceiling under inflationary conditions will result in shortages. It doesn't matter that the architects of the price floor intended to make the good or service more widely available. The result will be that it is less widely available.

The same is true with government welfare programs. The champions of the idea may want to reduce the number of people living in poverty. Instead they end up creating incentives to become and stay impoverished by offering a cash reward for meeting the terms that make a person qualified.

The same is true in foreign policy. The 20th century began with a war to end all wars. It should not surprise us that it ended up creating more and ghastlier wars than have ever been visited upon the human race. Economic sanctions also backfire. Forty years of sanctions against Cuba, for example, only ended up entrenching the totalitarian regime that still rules that country.

In the case of the war on terror, we could have known tomorrow's headlines five years ago. In particular, this headline, which is supposed to be shocking and apparently had people in Washington going nuts, seemed positively inevitable: "Spy Agencies Say Iraq War Worsens Terrorism Threat: U.S. Intelligence Assessment Is Said to Find a Rise in Global Islamic Radicalism."

Here we have another case of a policy backfire, one that was predicted on these pages five years ago.

The stated policy of the Bush administration, just before bombing Iraq's cities and overthrowing its Sunni government, was to bring freedom, democracy, and pluralistic happiness to the country.

Five years later, the puppet government in Baghdad is still in a bunker,

tanks patrol streets, there are curfews and speech controls, major parts of the country have effectively seceded, the water is dirty and disease ridden, electricity is still off, migration out increases exponentially, tribal war is routine, American soldiers' heads are blown off if they so much as poke them out of the foxhole, and religious and ethnic hatreds grow.

We keep hearing that Iraq is "on the brink" of civil war, but how will we know when we move from brink to reality? The Sunnis hate the ruling Shiites, the Kurds hate them both, and everyone hates the Christians and Jews. It's all about a struggle for power: who gets to twist the thumbscrews, and whose thumbs are screwed. If this is the brink, the reality will be unbearable.

It was indeed Bush's idea that he would quell Islamic radicalism by smashing the world that the relative moderates had created, and acting precisely as the fundamentalists always claimed he would act. It's as if the Islamic extremists themselves had written the script, and George played the leading role in a play they were directing.

Hence, even by the Bush administration's own standards, the war on terror has increased the problem rather than diminished it.

Students of government can hardly be surprised that a government program ends up creating the very opposite of what it purported to accomplish. Welfare increases poverty, the minimum wage boosts unemployment, prohibition promotes the banned behavior, and, just as we would expect once we understand the logic, the war on terror has created and encouraged the rise of more terrorism and the ideology that backs it.

We hardly need a National Intelligence Estimate to demonstrate it to us. What this intelligence estimate really shows is that the reality has become too

Continued on page 6

News from the Institute

The Mises.org Online Classroom

Whether you are looking to start a degree, finish a degree, or continue your education, enrollment in the Mises Classroom fits your intellectual demands and schedule. This program enrolls you in the Home Study Course in a real-time classroom environment directed by Professor Robert Murphy. He is one of the most prolific writers and brilliant young teachers in Austrian economics today. He received his Ph.D. from New York University, wrote his dissertation on interest-rate theory, is the author of *Chaos Theory* and hundreds of articles, taught at Hillsdale College, and currently teaches at the Mises University and works at Laffer and Associates.

He is directing the course at the forum of the Mises Classroom, a wonderful technology that permits the closest possible intellectual interaction through an organized and carefully guided forum along with real time chat. Enrollment gets you direct professor/student mentoring; a classroom environment where you can submit writings, ask questions of the professor, receive additional guidance and clarification, and interact with current and past students in the Mises Classroom; access to audio and study materials online; opportunities to engage the professor and/or other students on any topic as it relates to extended readings and related contemporary issues; directed readings deeper within the Austrian literature; a chat room that makes possible live interaction on a scheduled basis; and opportunities for seminar-style Q&A, possibly including guest faculty.

You can begin your study anytime and go at your own pace. The professor will be there to guide you through on a continuing basis, and assist your studies. Go to <http://classroom.mises.org>. ■

Power and Market

The story of Murray Rothbard's *Man, Economy, and State* is as dramatic as it is triumphant. The final section that stripped away every conceivable rationale for government intervention was cut out before publication—the work of a squeamish editor. But ten years later, it came out as a separate volume called *Power and Market*.

The Mises Institute Scholar's Edition united the two in a unified whole. And yet a market still exists for the separate volume as a blasting attack that leaves no wiggle room for statism of any sort. We've decided to print *Power and Market* in a separate book to meet the classroom demand. That volume is now newly available from Mises.org's online store. ■

Mises in Manhattan

Our September conference in Manhattan—The Fed and War Finance—was a rousing success. The room at the University Club was packed, and we heard talks by Thomas Woods, Lew Rockwell, Joe Salerno, Walter Block, and James Fogal, all of which were podcasted and archived. A special thank you to those who made it possible! ■

Continued from page 4

obvious for even the government to deny. The report cites gobs of secret data that can't be divulged to the public. Oh, sure. Anyone with a modicum of knowledge of the effects of all government policy, along with a bit of understanding of human nature, would have predicted this very thing.

After all, Iraq was never a hotbed of terror. 9-11 helped by whipping up the public for war, even though there was no relationship between 9-11 and Iraq. But it does appear that Bush got more than he bargained for. He can't win this war, no matter how many Americans and Iraqis he sends to their deaths.

But who precisely benefits in the end? Fundamentalists, to be sure, but also the federal government, which gets more power and control. There is also a critical financial factor. The tens of billions that have been shoveled out by the public sector to the private sector in this war have gone mainly to Bush-connected corporations and elites. They are the ones who have benefited from the "privatization" of the war, in the name of efficiency.

The best solution for Iraq right now is for the US to abandon this pipe dream of creating a central government that can rule the country and be friendly to the US. The way to avoid civil war is to lower the stakes of control by getting rid of the thing that some groups want to master and other groups fear. Iraq will

be more peaceful and prosperous without a central state.

Why is this view so rarely heard, even from people who should be pointing it out? What we have here is an intellectual failure of the conservatives and libertarians who have cheered for this war from the beginning. Why do these people, who otherwise understand the failure of government in all aspects of domestic politics, believe that the government has a Midas touch in dealing with foreign affairs? This is a dramatic example of cognitive dissonance.

It's as if a person who is terrified of drinking poison in the morning mistakes it for an aperitif in the evening. But government poison never changes. Whether the government is controlling prices or attempting to control the world through military force, the results are never what the planners anticipate.

What a poor example the pro-war conservative people set for the left! If conservatives and libertarians are not willing to apply their antigovernment logic consistently against war, how can they be surprised that the left is not willing to apply its antiwar logic domestically? Combine the two schools of inconsistency and you have the makings of the ever-growing welfare-warfare state.

So you want to know the future? It's not as hard as it seems. Expect every government program to fail to achieve its stated aims—domestic and foreign—and you will hit the mark every time. ■



Our complete book and merchandise catalog is available online at mises.org.

You may order online at mises.org, or by phone at 800-636-4737.

Imperialism: Enemy of Freedom

Mises Institute Supporters Summit • October 27–28, 2006

It is now widely understood that the US in the post-Cold-War world acts as empire but few understand the inevitable results and costs. This conference will explore what the Austrians have said on the topic, and how that differs from what the critics and proponents of global imperialism have to say.

**For more information
see mises.org/events,
contact Patricia Barnett
(pat@mises.org), or
call 800-636-4737.**

The price of the conference is \$195 for sessions, breaks, and a large reception. An additional \$45 covers the gala black-tie dinner, where the Gary G. Schlarbaum Prize for Lifetime Achievement in Liberty will be presented to Hans-Hermann Hoppe.



Jump-Start Your Legacy for Liberty!

If you are 70 or older, you can now make a gift to the Mises Institute using funds transferred from a retirement

account—without paying taxes on the distributions. Your gift can be accomplished simply and will result in your ability to maximize the benefits of your retirement-plan dollars. Plus, making a gift now enables you to partner with us in much needed expansions and you can witness the benefits of your generosity. But this opportunity only lasts until December 31, 2007.

- Charitable distributions count toward minimum required distributions.
- Transfers generate neither taxable income nor a tax deduction, so even those who do not itemize their tax deductions receive the benefit.
- You may transfer up to \$100,000 per year directly from your IRA.

Please contact our Director of Development, James W. Fogal, CFP®, at James@Mises.org or (334) 321-2106 with any questions you may have.



U P C O M I N G E V E N T S

- **IMPERIALISM: ENEMY OF FREEDOM
SUPPORTERS SUMMIT AND SCHLARBAUM AWARD**
Auburn, Alabama • October 27–28, 2006
- **AUSTRIAN SCHOLARS CONFERENCE 2007**
Auburn, Alabama • March 15–17, 2007
- **MISES UNIVERSITY**
Auburn, Alabama • July 29–August 4, 2007

Register for any conference online at mises.org or by phone at 800-636-4737.
Details for each event are available online at mises.org.



Ludwig von Mises Institute
518 West Magnolia Avenue
Auburn, Alabama 36832-4528

Nonprofit Org.
U.S. Postage
PAID
Ludwig von Mises Institute

RETURN SERVICE REQUESTED