



Nothing to Learn from the Antifederalists? It Just Ain't So!

BY JOSEPH R. STROMBERG

According to Paul Greenberg, writing in the *Washington Times* in late January, the dreaded Antifederalists and their Articles of Confederation are making a comeback. In particular, these miscreants dare to question executive power. He writes with patriotic horror—a horror that assumes as self-evident a partisan reading of American history, a reading force-fed to most of us in public school. On that view, the Antifederalists' return would be terrible indeed, since those gentlemen were a set of backward-looking rustics unwilling or unable to see the necessity of a strong central government to guarantee our “national” security. Their opposition to the Constitution under which we now allegedly live is all the proof needed.

In 1787 we had recently defeated the British Empire—*without* a strong central American government directing the struggle—but having succeeded, we are supposed to have been in greater peril than before.

Here, as in many instances, the winners wrote the history of the conflict. The “founders” made their own propaganda for themselves as the ultimate “greatest generation.” A set of nationalist historians in New England carried this gospel into the early nineteenth century.

The winning side even chose the parties' labels: “Federalist” for centralizing nationalists, and the negative-sounding “Antifederalist” for defenders of genuine federalism.

In 1983 historian Michael Lienesch noted that standard-issue historians invariably abuse the Antifederalists; fashions change, and the indictment with them, but there is *always* an indictment against the Antifederalists. They were “too local,” narrow of vision, afraid of the future, and unable to share the Federalists' “continental vision.” They were “too democratic”; later, they were seen as “too undemocratic.”

Thus Antifederalists were “men of little faith,” as historian Cecelia Kenyon put it in 1955. But now it is 2006 and the idea of having *faith* in *this* government at *this* time is all played out. Thomas Jefferson, out of power, would thunder about binding officeholders down with “the chains of the constitution”—and a good idea, if the Constitution were anything more than a “rope of sand.”

Over the long haul, pretty much *every* dire prediction made by the Antifederalists has proven correct, although some took longer than others for their realization; and yet the Antifederalists get no credit. Among the predictions were ongoing centralization, creation of artificial monied aristocracies, long-run effacement of the states, and even a federal war made on a state or a group of states.

The Federalists invented a structure they could dominate, pronouncing it republican, even “democratic,” since the people (one or thirteen?) were *ultimately* sovereign. Very comforting.

Mr. Greenberg's attack on the Antifederalists is a mere occasion for deploying the much-mooted Unitary Executive theory. The founders, he asserts, would be upset to learn that the president is forced to go to a quickie, drive-through court (FISA) before carrying on much-needed surveillance. What a shameful climb-down from the bold presidential assertion and usurpation “intended” by Article II.

One need only look at the written work of recent Supreme Court nominees and the administration's famous torture memorialists to see the grand (and central) project: sustaining the absurdist Unitary Executive theory. That doctrine credits the presidency with more unknown, “implied,” and “inherent” powers than a team of FDR, Truman, and Nixon could dream up on an

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especially ambitious day. And the torture memos provide an example of what all this alleged power is good for.

Well-meaning constitutional traditionalists may argue of course that the Constitution, as written, debated, and ratified has little to do with such Bonapartist notions. When the “paper” of 1787 was under discussion, its advocates repeatedly told Americans that it secured their liberties and property through sundry interlocking protections. The president would only execute the laws passed by Congress. Congress’s acts would not be legally binding unless consistent with the Constitution. Powers were enumerated.

These restrictions and safeguards withered away rather quickly. Congress and the Court did their part, and presidents began pretending to have found a vast treasury of power lurking, hitherto unmarked, in “The executive power”—in the *phrase*, that is, in the *mere words* that begin Article II, now revealed as mystic chords of construction, if not memory.

In opposing the Constitution the Antifederalists were not mounting a positive defense of the Articles. The value of their critique lies precisely in the critique of the new model—advanced warnings of the many flaws in the Federalists’ product. Not the least of the flaws was the presidency itself. The office as such entails a quadrennial, circus-like disruption of American life, promotes centralization and social tinkering, and licenses irresponsible foreign policies.

“Energy” certainly abounds in the executive, but we might have done better with a committee.

Founders as Neoconservatives

Mr. Greenberg asks us to think of the founders as “neo-conservatives.” This is an insult that must not stand, however little one may respect the founders’ work. Mr. Greenberg is really expounding the “dare theory” of American law. He *dares* us to believe that, constitutionally, one man, more or less elected, can legally initiate war and do pretty much anything that pops into his head as an alleged means of defending the United States and repelling attack, even attacks that have not happened yet and probably would not ever happen until or unless a whole array of unlikely intermediate steps should fall into place.

Thanks, but no thanks. We are not likely to believe such a proposition, in its fullness; nor need we affirm the goodness of such a system. If Greenberg persuades us that the original Constitution actually envisioned such unknowably large executive powers, we are free to conclude that it is something of a swindle and stands in need of serious retooling, revision, or replacement.

Perhaps a convention exceeding its instructions, as in 1787, could do the trick.

“Conservative” neo-monarchists have raised the stakes, and they may answer for any drastic conclusions drawn. Such conservatives concede the Antifederalist claim that the Constitution was *already* a dangerous consolidation of power. Of course we may read the Antifederalists as spelling out the *tendencies* that would necessarily arise under the new system, once their opponents exploited each and every constitutional ambiguity (as they ultimately did).

Neo-federalists may say that the Constitution does *not* grant power to do X and Y; but once the federal government does them and the courts affirm the deed, present-day Madisonians have no argument. They may gripe about usurpations or mistakes, but since those are never reversed, what good is Mr. Madison’s creative tinkering now? The Antifederalists were far better prophets, even if they could be premature on the timing of outcomes they feared.

The Federalists were the irrational optimists. The first Congress effectively refuted Madison’s famous argument in Federalist No. 10 about the “dilution of faction” in a larger political sphere. At this late date it is easy to resolve one’s love-hate relationship with the *Federalist Papers* decisively in favor of hate. As the Virginia jurist Abel P. Upshur wrote in 1840, “the Federalist is defective in some important particulars, and deficient in many more.”

In denouncing rejection of the energetic, God-like presidency as “Antifederalism,” Greenberg has opened conceptual doors he might have left shut. Good.

I wish there *were* genuine Antifederalists on the horizon today. If Democrats should really move in that direction—more power to them. If you see any Democrats embracing the Articles of Confederation, by all means welcome them aboard. 