

American Government & Politics: A Christian Worldview.
Article – “The Prophetic Antifederalists” (15–20 Minutes)

TEACHER INSTRUCTIONS/KEY

Goal

Students learn from this article how the “Antifederalists” (actual Federalists) correctly predicted the rise of federal government overreach after the ratification of the U.S. Constitution, with a focus on Robert Yates’s warnings about the Supreme Court.

Instructions

1. Instruct students to read the article and answer the Questions for Review. (Take 10–12 minutes.)
2. Have students discuss in pairs/groups, then together as a class.

Questions/Key

1. What facts in the article were you already familiar with?
AWV. Students might say (a) the term federalism, (b) the names “Federalists” and “Antifederalists” being misnomers, (c) the “Antifederalists” opposition to the proposed Constitution, (d) the potential abuse of the “general welfare” and “necessary and proper” clauses, etc.
2. How does the author say that the “Antifederalists” (true Federalists) warned about the “general welfare clause” and the “necessary and proper” clause? How does today’s U.S. government prove them right?
He warns that the “general welfare” clause would be used to justify the passing of any unconstitutional law (“It’s for the general welfare!”) and the “necessary and proper” clause would be used to “override limits on delegated federal powers”. The “Antifederalists” have been proved right, since we can see today how expansive and overpowering the U.S. government is, interfering in virtually every aspect of the people’s lives.
3. Robert Yates walked out of the Constitutional Convention because he thought it was “exceeding its instructions.” What does the author mean by this? (That is, what were the delegates’ instructions?)
Yates withdrew from the convention because it was “exceeding its instructions” (trying to create a new, powerful, central government instead of revising the AOC).
4. Why did Yates see the Supreme Court as particularly dangerous? What did he predict the Supreme Court would do over time with precedents?
The Supreme Court would have no check on its power because they were untouchable by the people and the Congress. The SC would make up its own reasons for allowing laws, even if they were unconstitutional, and it would “interpret” the Constitution whatever way it wished. Over time, one precedent after another would build a huge new list of powers that never should have existed.
5. Are you aware of any outrageous Supreme Court decisions in American history? If so, what does this show about Yates’s warning about the U.S. Constitution?
AWV, but students might mention the infamous Roe v. Wade abortion case, the “Obamacare” case that claimed the U.S. government could force individuals to buy health insurance, claiming that it was a “tax” and therefore allowable, etc.

Debrief

Ask students: “When Presidents appoint Supreme Court justices, why is there often a huge battle in the Senate? Why should who serves on the Supreme Court matter very little?” *There’s a battle because some in the Senate have different “interpretations” of the Constitution than others, and don’t want to confirm a justice with a different “interpretation.” But words should mean what they say, and “interpreting” the Constitution this way or that way shouldn’t even be “a thing.”*

The Prophetic Antifederalists

Mises Institute

Gary Galles • 7/24/2019

Most school kids are left with the impression that the U.S. Constitution was the inevitable follow-up 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...[which] 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 U.S. 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....

[I]t 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....

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.... 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....”

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 Tenth Amendment, would require).... 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.... That would 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.... [It] is hard to argue with Brutus's conclusion....

[T]oday, 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...before the Sixteenth 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....

Questions for Review:

1. What facts in the article were you already familiar with?
2. How does the author say that the “Antifederalists” (true Federalists) warned about the “general welfare clause” and the “necessary and proper” clause? How does today’s U.S. government prove them right?
3. Robert Yates walked out of the Constitutional Convention because he thought it was “exceeding its instructions.” What does the author mean by this? (That is, what were the delegates’ instructions?)
4. Why did Yates see the Supreme Court as particularly dangerous? What did he predict the Supreme Court would do over time with precedents?
5. Are you aware of any outrageous Supreme Court decisions in American history? If so, what does this show about Yates’s warning about the U.S. Constitution?