

LIBERTY TREE

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By Dick Greb



When it comes to the constitution, innovation is no virtue.

The Constitution established a federal government of limited powers, limited not only by their explicit and full enumeration in Article 1, § 8, but also by the enumeration (but by no means an exhaustive one) in the Bill of Rights of certain important rights upon which the government must not trespass. Any power exercised by the government which does not fall within the list given in § 8 has been usurped, either from the people themselves or from the states, and being extra-Constitutional, is therefore illegitimate. Now the Bill of Rights is not so much a limit on the powers *per se*, but rather a limit on the means by which such powers may be exercised. For example, the lack of an enumerated power to restrict the ownership of arms in § 8 makes the Second Amendment unnecessary as a limit of power. The purpose of the amendment then, is

to prevent any restriction on the right as a consequence of the exercise of an otherwise Constitutional power. This is the only way that each and every part of the Constitution can be given its proper significance, and the protections envisioned by our Founders can be realized.

Another part of those protections was the division of powers between three coordinate branches of government, with the idea that each branch would jealously guard its own power from the other two, and thus prevent the consolidation of all power in one of them. That same jealousy of the state governments with respect to the powers reserved to them was also part of the concept, as a guard against encroachment from the feds in those areas. Yet, with all of that, the Founders still warned that it would require eternal vigilance by the people in order to preserve our liberty. Alas, we failed to heed those warnings, and so our liberty is now in serious decline, if not yet on its last legs.

I've always been amazed at the amount of foresight exhibited by the writers of the Anti-Federalist Papers to the dangers in the proposed Constitution, especially since two centuries of experience under it has borne out so many of their predictions. At the same time, in answering the objections of those writers, James Madison, Alexander Hamilton and John Jay responded with the Federalist Papers which, despite giving important insights into how the Constitution

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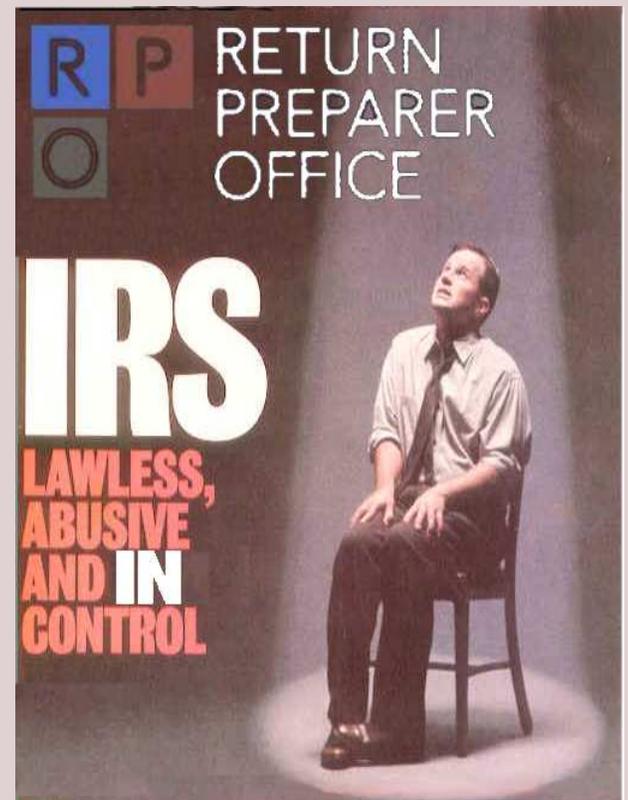
THE RPO: IN CONTROL

It starts with 'regulating' an industry to 'protect' the public. Thereafter, it's all downhill to tyranny.

The latest IRS scheme to license all tax return preparers is a glaring example of this time-worn highway to oppression. Proposed just a couple of years ago,¹ the IRS "Return Preparer Office" licensing ruse has been rapidly implemented, and has now been expanded to fingerprint all applicant preparers as part of an "oversight" program which will "run the fingerprints through an FBI database."²

Peter Pappas, a CPA and tax attorney, grouched recently on his blog, "Up until now I have been a strong supporter of IRS licensing and regulation of unenrolled tax preparers. But that was before I knew how far these power-dizzy bureaucrats would take it. Fingerprinting people goes too far."³

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1. See the July 2009 *Liberty Tree*.
2. See www.accountingtoday.com/news/IRS-Begin-Fingerprinting-Tax-Preparers-60267-1.html#
3. See <http://blog.pappastax.com/index.php/2011/09/28/irs-to-fingerprint-tax-preparers/>

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The big boys want IRS favors

It turns out, however, that fingerprinting *per se* is not really the focus of Pappas' ire, but rather the fact that such demands will apply to sophisticates like *him*. "These invasive rules are bound to trickle down to already-licensed and regulated preparers: The CPAs, the tax attorneys and the IRS Enrolled Agents." Ah, we see. Pappas believed the IRS' most stringent controls would be reserved for the riff-raff, the *unauthorized* tax preparers, those non-attorney, non-CPA persons who dare to compete in *his* tax preparation industry.

Pappas has plenty of like-minded company. In February 2008, the IRS "Oversight Board" sponsored a "public" meeting of "industry stakeholders and consumer advocacy groups" with panelists carefully chosen from tax fields,⁴ ostensibly to get their input on whether tax return preparers should be regulated by the IRS. Unsurprisingly, the panelists, according to the IRS, "explained that tax return preparation is a *profession*, not a part-time job during tax filing season. [They also] explained that, as professionals, most tax return preparers want to *protect their profession*."⁵ (emphasis added).

On July 30, 2009, another "public" forum was held, again with one panel of "consumer advocates," and the other of tax professionals—primarily organizations representing enrolled IRS agents, CPAs, and attorneys. Predictably, the IRS reports these panelists were "uniform" in their support for increased IRS oversight of tax return preparers, and all "commented on the appropriateness" of requiring registration and unique identification numbers. Nevertheless, they all agreed that attorneys, CPAs and enrolled agents should *not* be required to undergo competency testing, and they "strongly advised against any strategy that would impose duplicative regulatory regimes" on professionals such as themselves.⁵

It is readily apparent that no matter how hotly hued in tones of 'concern' for taxpayers who *might* be harmed by incompetent preparers, the regulatory fever of existing preparer "professionals" is due to pecuniary motives; *i.e.*, a desire to protect their economic territory. Adam Smith, an economist writing at the time of the American war for independence, explained the real goal of such regulations:

... the motive of all these regulations, is to extend our own manufactures, not by their own improvement, but by the depression of those of all our neighbors, and by putting an end, as much as possible, to the troublesome competition of such odious and disagreeable rivals.⁶

Indeed, since tax attorneys, CPAs and enrolled agents have been exempted from the requirements of testing and continuous education,⁷ they are handed the com-

NEWS FROM ...

Truth Attack

STICK UP FOR THE TRUTH!



A generous patriot has provided large quantities of these business-card sized stickers (above) which can be placed nearly *anywhere*; they peel off easily, without damaging surfaces. The stickers are yours for free, and they are something you can do to challenge brainwashed Americans with the truth. Just visit www.truthattack.org, click on "Get Involved," then "What Can You Do," and finally "What Income Tax Stickums" to request a packet of these and then start sticking up for truth.

The stickers drive people to the TA website, helping to damage IRS' lies and myths. Put one on the gas pump every time you fill up, stick one to the front of vending machines. Better than graffiti, isn't it?

You can probably find a dozen ingenious ways to use these stickums. Let us know where you "stuckem" and we'll share it with the rest of the troops. Even if it's only the guy who takes it off, *someone* will start questioning the myths and lies. And that will be an effect *you caused*.

petitive advantage. The IRS also announced that tax preparers who don't sign returns are exempt from the testing and continuous education, though they still have to obtain a PTIN (Preparer Tax Identification Number). So H&R Block, Jackson-Hewitt, Liberty Tax, and other big franchises — whose return preparers are "supervised" by *professionals* who actually sign the returns — will not have to bear additional expenses. Who

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4. *E.g.*, spokespersons from the Certified Financial Planner Board of Standards, Federation of Tax Administrators, National Society of Accountants, National Association of Enrolled Agents. See IRS Publication 4832, *Return Preparer Review*, Dec. 2009.

5. See the *Return Preparer Review*, pp. 24-27.

6. See *An Inquiry into the Nature and Causes of the Wealth of Nations*, p. 537 of Penn State's electronic version: www2.hn.psu.edu/faculty/jmanis/adam-smith/Wealth-Nations.pdf

7. IRS Notice 2011-6.

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was meant to be construed, are pretty much universally ignored by those in power as any kind of guide today. With this background, it really shouldn't be a surprise how much our straying from the Founders' plan has cost us in terms of freedom.

The original scheme of limited delegated powers created a government in the character of a common agent, owing an equal fiduciary duty to every citizen. The enumerated powers were those that could be carried out by such a common agent, without violating its duty to any one of its principals. This is discussed more fully in my oft-cited¹ article "Government? Agents!" in issue #248 of the Reasonable Action newsletter. The delegated powers are few in number because there are so few powers which can effectively be exercised by an agent who has so many principals whom he must equally serve. Whenever that agent wanders into other fields, he must necessarily favor one (or some) of his principals' interests over others, thereby violating his fiduciary duty to the latter.

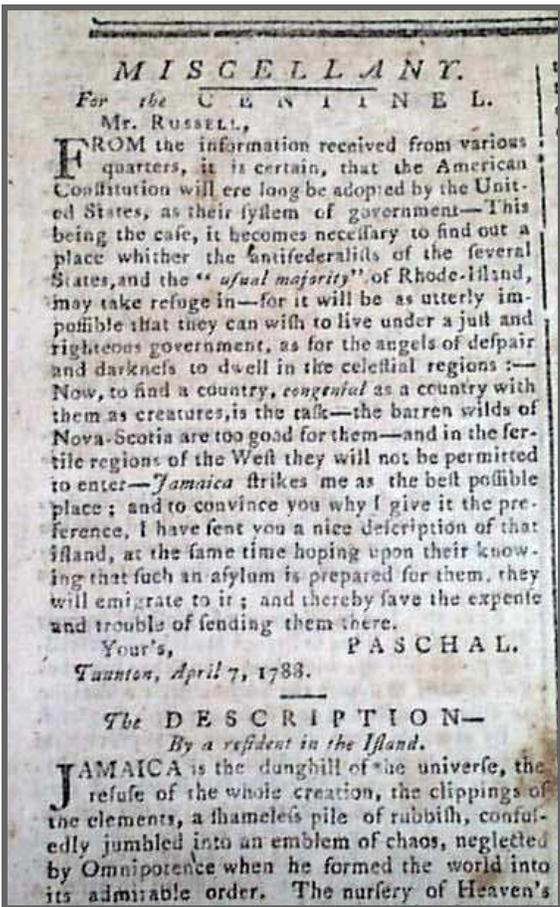
One of the clearest examples of this is Prohibition, as well as its current incarnation, the War on Drugs. Nowhere in the Constitution is the federal government granted power to prohibit any substance, and rightly so. But at least when it wanted to prohibit the use of alco-

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holic beverages, it sought and obtained an amendment to the Constitution to give it that power. And yet, the power granted by the 18th Amendment is significantly different from those granted in Article 1, § 8, in that it can't be exercised consistently within the framework of a government acting as a common agent. That is, whenever it attempts to enforce prohibition against anyone who has an interest in drinking alcohol (an activity that in and of itself, does not harm others), it is acting contrary to that person's interests. And as history bears out, there were many people who had an interest in drinking alcohol, enough that eventually Prohibition was repealed, but not before irreparable harm was spread far and wide, in the form of, among other things, police corruption, organized crime, and their attendant victims. But even more than these is the continuing harm to the principle of government as a common agent. The ratification of the 18th Amendment began a formal shift towards what Frederic Bastiat, in *The Law*, terms "legalized plunder," or in general, the use of the coercive force of government to benefit one group over another. For this reason, to my mind, the 18th Amendment was illegitimate from the start.²

And then came the War on Drugs, for which the government didn't even bother to amend the Constitution. Once again, the harm caused by this travesty is immense. In addition to the rampant corruption at all lev-

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During the Constitutional ratification process, federalist propaganda often derided the fears of the anti-federalists that the proposed government would result in tyranny. Above, a savage pro-federalist cartoon, "A Peep into the Antifederal Club," 1793, ridicules Thomas Jefferson and his followers as a disruptive mob. To the left, a 1788 letter to the *Massachusetts Centinel* by "Paschal" states "it is certain that the American Constitution will ere long be adopted ... This being the case, it is necessary to find out a place whither the antifederalists ... may take refuge in—for it will be utterly impossible that they can wish to live under a just and righteous government ... Jamaica strikes me as the best possible place ... [It is] "the dunghill of the universe, the refuse of the whole creation ... a shameless pile of rubbish..."

- 1. Often cited by me, that is.
- 2. A similar situation would exist if somehow a Constitutional amendment was ratified that purported to repeal the Second Amendment and to grant a power to prohibit the private ownership of weapons — it would be equally invalid from its inception.

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then is subject to *all* the new regulations? As blogger “Taxgirl” stated, “Basically unenrolled signing preparers.”⁸ A perfect outcome for the tax *professionals* who always desired that the PTIN, licensing and regulation apply to the *unwashed*.

Naturally, as unenrolled tax return preparers are discouraged by the regulatory process — paperwork, annual renewal fees, testing, fingerprinting, and continuous education requirements — the smaller the number of ‘qualified’ tax preparers becomes and the greater the demand for professionals. Business booms for the big-timers, and prices for return preparation go up across the board.

Perverse protection

Control cannot be obtained by agencies appealing to the ‘protection’ of a profession; citizens might rightly apprehend that favors have been handed to some at the expense of others. Therefore, in order to sell such control to the citizenry, all attempts are made to depict regula-

tions as necessary to the ‘protection’ of the public. To that end, the IRS employed a “Consumer Advocacy Panel” in its “public” forums. These organizational participants were also carefully limited, however; out of five, three were organizations which utilize volunteers to prepare tax returns for low-income people. Under IRS’ Volunteer Income Tax Assistance (VITA) and Tax Counseling for the Elderly (TCE) programs, such volunteers are already trained and tested online by the IRS. Will an industry-wide loss of affordable, unenrolled signing preparers increase the free return help ‘business’ of these non-profits as well?

Whatever the outcome, now that the IRS controls return preparers, it will keep tightening the screws. Even worse, to establish this control, the IRS has ventured outside the laws written by Congress. More about that in our next issue.



8. www.taxgirl.com/irs-targets-100000-tax-professionals-for-noncompliance/

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els of government and the organized crime cartels that do much of the trafficking in “illegal” drugs, we can also add the imprisonment of tens of thousands in federal prison alone.³ But again, the more important damage is the erosion of our rights and solidification of legalized plunder and oppression as the modus operandi of all levels of government. Just stop and think of all the ways in which the War on Drugs has diminished our liberty. No-knock warrants, usually performed by militarized SWAT teams, are largely justified because of the supposed ease of disposing of the evidence in drug cases. The recent murder of Jose Guerena in Arizona by trigger-happy jackbooted thugs (this time, from the Pima County SWAT) is one of the latest of many examples of the tragedies resulting from such tyrannical actions. Money laundering and structuring laws, which invade our privacy and require banks and other financial institutions to report any “suspicious” transactions we make in cash, are based on Article 3, §1(b)(i) of the 1988 United Nations Convention Against Illicit Traffic In Narcotic Drugs and Pyschotropic Substances.⁴ Once in place however, these laws were used to jail and confiscate the property of a minister and his wife for daring to withdraw money from their bank accounts in amounts not approved by the government.⁵ Likewise with asset forfeiture laws, which are used to steal any property the government can claim has been involved in some

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crime.⁶ If some drug-sniffing dog gives the sign, well, you can just kiss your property good-bye.

The point of all this is just that once we deviated from the original plan, which authorized only such powers as could be exercised to everyone’s equal benefit, we stepped onto the slippery slope of full-scale tyranny. Trying to use the force of government to coerce others into acting the way you would prefer them to act, rather than the way they choose for themselves, will always end in it being used against your interests, too. After all, if you can use it that way today, then what more justification need be given tomorrow when some other group wants to use it to enforce their preference for *your* behavior? Eventually, the government becomes so corrupt with power that it no longer even cares what preferences their “subjects” may have. They will use that power of legalized plunder to benefit none but themselves, all the while claiming that it’s the “will of the people.”

This is the reason why it is so important to recognize the demise of the principle in the first step against it, and to deny it then. Because once the slide starts, it is much harder to regain our footing. But if we are ever to restore liberty in this country, we must find a way. We here at the Fellowship believe the Liberty Works Radio Network plan is just such a way, and we hope that you will continue to help us in our efforts to keep that plan alive.



3. According to Department of Justice statistics (<http://bjs.ojp.usdoj.gov/content/pub/pdf/p09.pdf>, p. 33, Appendix Table 18), 74,276 of 131,739 (56%) federal prisoners in 2000 were incarcerated for drug crimes. By 2009, the percentage was down to 50.6%, with 95,205 federal drug criminals out of a total of 187,886.

4. www.incb.org/pdf/e/conv/1988_convention_en.pdf

5. For more on this story, see the September 2009 Liberty Tree on lwrn.net

6. See “How Police Confiscation Is Destroying America” by Jarret B. Wollstein, October 1993, www.fff.org/freedom/1093c.asp