

# Nullifiers and insurrectionists: America's antigovernment tradition

by [Robert Westbrook](#) in the [March 8, 2000](#) issue

*A Necessary Evil: A History of American Distrust of Government*, by Garry Wills

American intellectuals worthy of the name are thin on the ground these days—hard to find amidst swarms of academics incapable of addressing wide audiences and media pundits capable of addressing them only in clichés. Garry Wills has for years stood out among those few critics able to convey complex arguments to a broad readership. Journalist, historian, biographer, newspaper columnist and sometime college professor, he has proved equally at home with the theology of St. Augustine and the movies of John Wayne. His studies of the American founding and of such iconic presidents as Washington, Lincoln, Kennedy, Nixon and Reagan are on the short shelf of books indispensable to an understanding of American political culture. He is the closest thing we have nowadays to Walter Lippmann.

In *A Necessary Evil* Wills marshals his usual blend of careful scholarship and vigorous polemic to make a case against the strong streak of “antigovernmentalism” that marks the American political tradition. He offers a catalog of the various forms taken by American distrust of government since the late 18th century, ventures to debunk the historical myths that have sustained them, and argues for government as a necessary good.

Wills began this book in the wake of the Republican triumph in the congressional elections of 1994, in which conservatives apparently rode to power on a wave of antigovernment sentiment, sentiment they promised to honor by taking out a contract on the national state which they labeled a Contract with America. But as Wills observes, Newt Gingrich was only the latest in a long line of American enemies of the state, and not the first to lay claim to the authority of the Founding Fathers for his efforts.

As Wills sees it, the peculiarly strong and long-lived hostility of Americans to government is the consequence of longstanding widely held beliefs and values that

have often cut across the ideological differences that otherwise divide us. Behind opposition to government throughout our history he finds the persistent conviction that government is at best a necessary evil that should be minimized, and the equally persistent and widespread belief that “legitimate social activity should be provincial, amateur, spontaneous, candid, homogenous, traditional, popular, organic, rights-oriented, religious, voluntary, participatory, and rotational.” These values he contrasts with other beliefs and values with which it is readily apparent he is himself in greater accord: “a belief that government is sometimes a positive good, and that it should be cosmopolitan, expert, authoritative, efficient, confidential, articulated in its parts, progressive, elite, mechanical, duties-oriented, secular, regulatory, and delegative, with a division of labor.”

Antigovernment sentiment in the U.S. has, he claims, taken on added authority by means of a carefully constructed and well-maintained story about the nation’s founding which holds that the Constitution is itself an antigovernment document, designed above all to tether the power of the national state. By these lights, ours is a government intended by the Founders to be hamstrung by separated powers, checks and balances, and the inviolable reservation of individual and states’ rights. “Our very liberty depends so heavily on distrust of government,” Wills notes, “that the government itself, we are constantly told, was constructed to instill that distrust.”

In a whirlwind tour of American history and political theory, Wills finds at least some of his constellation of antigovernment values at work in the theory of nullifiers from John Taylor of Caroline, Thomas Jefferson (of the Kentucky Resolutions) and John C. Calhoun, who argued for the constitutional right of states to reject federal law, to contemporary “academic nullifiers” such as law professor Akhil Amar, who has offered a limited defense of jury nullification.

He finds these values as well in the handiwork of “insurrectionists” from Daniel Shays to John Brown to Timothy McVeigh, and in the arguments of neo-republican legal scholars such as Amar, Sanford Levinson and David Williams, who find a mandate for revolutionary resistance to oppressive government in the Second Amendment right to bear arms.

Antigovernment sentiment takes on a different dress in the activities of vigilantes—from the Regulator movement in the backcountry of colonial South Carolina to the Ku Klux Klan to abortion clinic bombers. Unlike insurrectionists who

resist government because it is repressive, vigilantes “take arms to do the government’s work because the authorities are not repressive *enough*.”

As some of these examples suggest, by “antigovernmentalism” Wills really means opposition to a powerful national state. Apart maybe from the handful of cranky intellectuals such as Henry David Thoreau featured in an odd chapter on individual “withdrawers,” there are no anarchists in Wills’s cast of characters. Nullifiers such as Calhoun were acting against the power of the federal government in defense of the power of the state governments (and their authority to preserve local institutions such as slavery). The academic nullifiers and insurrectionists with whom Wills seems to have the least patience are, to be sure, arguing against strictly expert, elite and wholly delegative government, but they have done so on behalf of a full measure of amateur, popular and participatory *government*.

While the antigovernment values Wills lists have no doubt played an important role in shaping resistance to the power of the national state, he slights at least equally obvious explanations for it. Not least among them would be the very abuses perpetuated by the national state at home and abroad. Wills himself alludes to some of these, such as the extraordinary liberty Jefferson took with the liberties of his countrymen during the embargo he imposed on trade with England and the abuses of the national security state during the cold war. To these one might add such instances as the constitutional protection of slavery which led some radical abolitionists to repudiate that document; the massive violation of civil liberties during World War I; and the internment of Japanese-American citizens during World War II. Moreover, American distrust of government has long fed on the abuses of state power abroad, whether by despotic monarchs, fascist dictators or communist tyrants. One need not be haunted by visions of black helicopters to have good reason to be wary of Washington.

At the same time, Wills says surprisingly little about the underpinnings of mistrust of a powerful state that lie in the faith many Americans have long had in the virtues of competitive markets free of government interference—a faith conjoining odd fellows like radical Jacksonians and contemporary cybercapitalists. Complaints one hears about “big government” these days usually intone that faith (even when they come hypocritically from the beneficiaries of “corporate welfare”).

Wills rightly says that effective markets require governments that enforce contracts and ensure fair bargaining (as the Russians have discovered), and so an

antigovernment defense of markets is incoherent. But this much even the most adamant libertarians admit. Whether one calls this role for government a necessary evil or a necessary good, it is a modest and tightly circumscribed one. And one of little moment for those Wills terms the “real victims” of antigovernmentalism: “the millions of poor or shelterless or medically indigent who have been told, over the years, that they must lack care or life support in the name of their very own freedom” from a state that would actively intervene in the market on their behalf.

The greatest interest of Wills’s book lies in his efforts to dismantle the “fake history” of the early republic that he believes informs antigovernmentalism. Here he complains that we have been saddled with an ironically Anti-Federalist view of the Constitution as a charter for a shackled state. Calling upon the testimony of James Madison and other Federalist winners in the ratification debate, Wills seeks to demonstrate that the founders, far from seeking an enervated, divided, self-checking government, saw themselves as creating an effective national polity capable of necessary good. He disputes the claims of nullifiers that the federal union was a compact between sovereign states, argues that the founders sought coordination between the branches of government rather than a stalemate between competitive, coequal centers of power, and offers a strict construction of the Second Amendment as an authorization for state militias rather than a charter for the private ownership of assault rifles by potential revolutionaries.

Wills’s history is a useful corrective to a good deal of stubborn mythology. The Federalists’ Constitution was without a doubt a project designed to replace a weak, inefficient Confederacy with a much more powerful and efficient national state. But Wills weakens his case by overstating it. Though the nullifiers’ case for the Constitution as a compact among sovereign states is a lame one that flies in the face of the Preamble (“We the People,” not “We the States”), Madison did lose some important battles to proponents of the prerogatives of the states. His proposal for a federal veto of state laws went down to defeat, and most dispiriting for him, his opponents in the Constitutional Convention won equal representation of the states in the Senate. (And this is the provision of the Constitution most difficult to amend since no state can be deprived of equal representation without its consent.)

Madison did seek an efficient division of function among the branches of the federal government, but he was not as averse as Wills suggests to the need for checks and balances between them. In *Federalist 51*, he argued that “the constant aim” of the Constitution was “to divide and arrange the several offices in such a manner as that

each may be a check to the other.” And he spoke of giving “each department an equal power of self-defense.” Wills’s contention that Madison was a proponent of legislative supremacy among the branches is unconvincing given that it was the overweening power granted legislatures by the state constitutions that Madison and other Federalists sought to avoid at the federal level in the Constitution. Madison did indeed say, as Wills points out, that in a republic the legislature necessarily “predominates,” but he did so in the context of arguing for the wisdom of dividing the national legislature into two bodies in order to limit potentially “dangerous encroachments.”

On the whole, Wills moves Madison much closer than most historians would to Alexander Hamilton, the one Founding Father who can be said without question to have been committed to a national state geared strictly for efficiency and the effective exercise of preeminent power. Wills then has to scramble to explain Madison’s flirtation with nullification in the late 1790s after he moved into opposition to Hamilton’s project.

The most intriguing feature of Wills’s account of the founding is its neglect of the centrality of popular sovereignty to Federalist arguments. The great political genius of Federalist polemics in the ratification debate was the manner in which they appropriated this concept to deflect claims to state sovereignty, discount Anti-Federalist charges that they were undemocratic, and render the Constitution an expression of popular will. All this in defense of a document that left the ordinary citizen with little or no role to play in the new government.

Amar, along with other students of the Constitution such as Hannah Arendt and Gordon Wood, think the Anti-Federalists had a point when they objected that the Federalists, for all their talk of popular sovereignty, were proposing to constrict democracy. And Amar and others such as his colleague Bruce Ackerman (leaders of what Wills terms the “Yale school of nullification”) have been arguing that the Federalists were not altogether successful, leaving room in our constitutional government for exceptional moments of popular intervention on behalf of a fundamental reorientation of American politics. Reconstruction and the New Deal, Ackerman has contended, were two such moments—one in which the people mobilized for racial justice and the other in which they pressed for a more expansive welfare state.

Ackerman emphasizes that such moments are rare, and it is difficult to see an issue currently on the horizon that would provoke such a departure from the normal politics of elite bargaining. But one might imagine, for example, how the fierce debates over “globalization” that recently spread to the streets of Seattle might occasion yet another “constitutional revolution” in which the people insert themselves into the politics of international trade on behalf of either ceding or protecting the national sovereignty that the Constitution formally entrusts to them.

It may be that “nullifying” legal scholars are guilty of too much “law office history,” tailoring historical inquiry to fit the needs of their client, the People. But the clear intent of this history is to find more space in the American constitutional tradition for the exercise of popular sovereignty than either Madison or Wills would like. They would have us understand the Constitution as promising a more democratic government than Wills would allow. With Madison, Wills believes that a popular role in good government begins and ends with the election of governing elites and labels “antigovernmental” those of more democratic inclinations. “Populism should give everyone a voice in government,” Wills concludes, “but once that voice has elected certain officials, they become an ‘elite,’ . . . and it makes no sense for the people to resent what they have themselves brought about.”

In this respect, Wills recalls another aspect of Lippmann. “To support the Ins when things are going well; to support the Outs when they are going badly,” the latter wrote in 1925, “this, in spite of all that has been said about tweedledum and tweedledee, is the essence of popular government.” No one did more in his time than Lippmann to spread the word among his fellow citizens that government by the people was no longer something for which they need—or should—strive. Here too Wills has apparently picked up Lippmann’s torch.