Episode 1,524: The Constitution a Coup?

Guest: Patrick Newman

WOODS: It was great seeing last weekend in Los Angeles, which doubled as a supporter summit event for the Mises Institute and a book launch event for you for the fifth volume, as I just told folks, of the *Conceived in Liberty* series by Rothbard. And I might add, by the way, for anybody who hesitates, which you should not, to read this book, thinking, *Well, I haven't read the other four volumes of* Conceived in Liberty*, so I can't read this fifth one*, stop it. That's just some crazy excuse, okay? These are self-contained volumes. Not to mention, Patrick here, your editor, has a seven-page summary of the other volumes to get you up to speed, so don't let that be an excuse. I mean, Rothbard died in early January 1995. Here we are in 2019. We're getting another Rothbard book. Don't make excuses not to get it. That's my opening pitch for you, Patrick.

NEWMAN: [laughing] Thank you very much. It was a great opening pitch.

WOODS: So I want to start with a little bit of the — we've told this before, but it's worth exploring again — the story of the book itself. Now, I remember when I was at the Mises Institute from 2006 to 2010, I saw maybe like an excerpt of Volume 5 that had been typed out somehow by somebody. There were bits and pieces that existed, but then long passages, nobody knew what they said. And so there was some thought that maybe Joseph Stromberg, who was historian in residence at the time, might be able to salvage something from it or one of us might be able to salvage something from it.

So there was a desire at that time to see the light of day, but nothing came of it then, because one nice thing about the Mises Institute, among many, is that Rothbard's entire library is there, all the books that he owned. So a lot of the time when you're looking at a book on the shelf, you're looking at the very copy Rothbard himself owned. And you can find that out right away, because large sections of the book in question will be underlined. There'll be comments, exclamation marks in the margin, sometimes outraged comments by Rothbard. And most of the time, you can't read what he's writing, and you wish you could. You want to know what is he saying to Keynes on this page. You just cannot read it. And that was the stumbling block, because he had written out *Conceived in Liberty* in longhand, the fifth volume.

So I'm curious to know, you figured this out. You got somehow the Rosetta Stone for Rothbard's writing. And I guess I'd like, this time, if you could try to describe a little bit what that process was like. Did you little by little crack it, or was there a thunder bolt one day, and you got the whole thing? What did that process look like?

NEWMAN: Yeah, so it's a great question. So basically, it was a time-consuming process of just sort of a step by step, you're going sentence by sentence or really word by word. And so initially when I started this — so it is true Rothbard or someone earlier on back in the '60s or '70s had typed out roughly 60 pages of the beginning, and there were edits in there, etc. And then the rest of it, right around the middle of the section on Shays' rebellion, it just falls off a cliff, so to speak, and it's just handwritten, longhand passages. And you look at it and it looks like hieroglyphics, and you go, well, that's the end of that.

And basically, it was a process that when I initially started, for about two days, I got maybe two sentences done. And even those sentences, I had to go back and look at some of the words, and he had scattered marks, and I said, well, this is going to take simply too much time. I don't have time for this. This would be sort of a lifelong project, almost when I'm retired. And the Mises Institute provided a lot of helpful encouragement. Barbara Ricard, the archivist at the time, as well as Judy Thompson, who is the senior editor said, *Well, hey, just keep on trying. I think you'll be able to get a crack*, etc. And I was ready to throw in the towel. And basically, I want to say I started on a Wednesday or Thursday, and over that weekend, it's like, all right, I'm really going to push for this. And it started to come. It started to basically flow, where I was saying, hey, I'm actually kind of understanding the words.

There was some help when he would have quotes of some passage someone said, and very helpfully, he provided footnotes. I mean, really, my editor's — you know, where I say editor's footnote, editor's remarks in brackets, all the other footnotes in quotes, those are his. And so you could track down the book, like you said, he has the book. I actually had to look at some of them through a library, the Auburn library, or you could type parts of the quote. You could figure it out on Google, and you could see the rest. And then you could say, oh, that's what that word means. Or oh, that's what — you know, oh, that's the word — then you can see, oh, so he writes his Gs like Fs, or the Ps — and that was sort of the help. And then you got better and better at it, where you could then start to read it — I guess you could read Rothbardian semi-fluently. And then you would go back, and you'd see, oh, that's the word I got wrong, etc. And then you could start to read it more and more fluidly.

So what happened is I would have the pages, the actual longhand pages, and I'd made copies of them. And literally like at the very beginning, every word I was highlighting with a different color and trying to, *Okay, that's what that means*, etc. And by the end, I started to do that less and less. I didn't have to write out my own translation before I typed it up. And then I could just basically start to look at the pages and type it up from there. So it was really like learning a new language. And while I still spent some later time translating really up until sort of roughly a couple months before the book's publication last summer, the bulk of this sort of deciphering process occurred in the summer of 2018, and it was for about six weeks, I want to say, that I was doing this more or less six and a half days a week for about like 10 to 12 hours a day. And it was definitely a time-consuming process. I was going to sleep, and I was seeing his words in my mind, just because you're literally like trying to learn a new language.

But it was thoroughly enjoyable, because I was basically reading something that no one else had read. And it was just this incredible history. And I was like, wow, this is pretty cool.

WOODS: So how long did the entire process take from the moment you first set eyes on the longhand text?

NEWMAN: So I initially looked at — when I started working the Rothbard archives in the summer of 2013, that was my second year as a Mises fellow. I stumbled upon it, and some of them were in different folders, and you're able to put them all together. And at least that's when I saw it. And so it was the summer 2013, and I said, wow, this is definitely a book. Unlike *The Progressive Era*, it's very clear that he finished the book, at least he wrote to the end of what he wanted to write. And I said this would be something cool to do in the future. And I was working on other things going, through grad school, and I worked on the unpublished first chapter of *Man, Economy, and State* or *The Progressive Era*, and I started to look at it again after *The Progressive Era*. So this is like the fall of 2017, 2018. And I really started to work on it ,like to actually work on the manuscript, decipher it, all of that, in the summer of 2018. So the bulk of the translation process occurred in about June and July of 2018, and then the rest of the time, I spent tracking down sources, going back and looking at, *Okay, did I get that word, right*? etc., and I worked on the index and so on in the summer of 2019. So the bulk of the translation, for about six weeks in 2018.

WOODS: Oh my gosh, did you do the index?

NEWMAN: Yeah, I did.

WOODS: Oh, okay. I did indexes for a couple of Rothbard books when I was a young pup at the Mises Institute in the mid '90s, and I have to say that just is a terrible job [laughing].

NEWMAN: Oh, yes, with *The Progressive Era,* yeah. It's what separates like the — like really, all right, how much do you really love what you're doing if you're willing to do the index?

WOODS: Exactly, yeah. Yeah, you and I belong to an exclusive club, we'll put it that way.

NEWMAN: Yes, yes.

WOODS: Yeah. So very, very exciting and amazing that this thing wound up seeing the light of day. And you're right, unlike the other book you worked on, this one clearly is self-contained, and it obviously gets right up to the end, because you could tell from the final chapter about the Constitution and his assessment of it, that that's the end.

Of course, I wrote the preface for this, because Judge Napolitano was writing what turned out to be rather lengthy foreword. So mine is of modest length, but I noted that one of the things I did when I first got my hands on this book, was I flipped immediately to the section on Shays' rebellion, which is an episode in American history that, really, historians by and large got wrong for a long time until — I'm trying to think of the guy's name. It'll come to me.

But about the early 2000s, there was a book that came out on Shays' rebellion that really rethought the whole thing, because it turns out it wasn't just indebted farmers who were rebelling against their betters, which is the way historians love to portray things. Leonard Richards, that's the name. *Shays' Rebellion: The American Revolution's Final Battle*. He was able to tell a different story, because he had access to or he discovered that documents existed about who had participated in the rebellion, which is normally very hard, because people who participate in rebellions don't normally like to make a public spectacle out of it. But he had found out, because they'd been required to sign loyalty oaths at the end. And he realized, wait a minute, these documents are right at the University of Massachusetts or whatever it was, right down the street. He was able to find them and evaluate and find, wait a minute, these people are not indebted. This is not what this was all about.

So Rothbard is writing the fifth volume of *Conceived in Liberty* probably in the '70s, I would think. And he doesn't have access to this new research. So I thought, what do Rothbard's instincts tell him is going on in Shays' rebellion? Is he going to repeat the party line, or is he going to point toward what we now know happened? And I flipped there, and doggone it, he anticipated what Leonard Richards wrote in 2003. I mean, it's just blankety-blank uncanny that the guy was able to do that. And that's the type of gem that awaits you in this book.

NEWMAN: Yeah, exactly. I mean, he had incredible — the insights in the book, because obviously they go beyond — there's many things particularly on the Constitution, etc. He really has great foresight, and he always provides a new perspective, and he always provides a very insightful perspective that you say, *Hey, wait a second*, that makes you think differently about this particular topic, say, the Constitution or the anti-Federalists or even someone like James Madison, etc.

And yeah, and then the Shays' rebellion, he says, well, it was basically a tax revolt. And he goes through this, and he goes through how it was the East versus the West, and how Massachusetts was forcing, basically wanted to pay all of its government debt at basically its specie value, it wasn't defaulting or repudiating its debt. The public was upset at the high taxes and being thrown in jail for not paying taxes, etc. And yeah, it's really a different perspective, because this entire period, the book is from 1784 to 1791, really, it ends at about 1789. It goes up to 1791 because he talks about the Bill of Rights ratification process, but that period, the ratification of the Constitution, that is usually rushed over fairly quickly, where you have the end of the Revolutionary War, and then you say, okay, we had the Article of Confederation, it didn't work. Then you had all the great men, they all gather over the summer for a big powwow in Philadelphia, and they devise the Constitution. And then the public just sort of — you know, there's discussion, but then they happily accept it, and then we're off to the Washington administration, and we're off to the races, so to speak. But Rothbard, really this is a book that's on a period that not a lot of people write about at length.

WOODS: Well, that's true, certainly not in this level of detail, going state by state and discussing the ratification process in each state. Most people don't know anything about that. So Rothbard is not going to just give you a summary of what happened. He wants to go into what took place in each state. All right, when you crack open this book, you find first of all, the book gets started on page 45, because between the Judge and me and your introduction, there's a lot of preliminary material that you can also enjoy.

So you've got a section on the economic legacy of the American Revolution. That would include discussions of public debt, paper money, public debt on the state and federal level, banking tariffs, all that stuff is covered. Then the subject of the Western lands, and then you start to get into the Philadelphia convention of 1787. So that's going to be the section that I think most people are going to want to skip directly to. You should read the whole darn thing, because the stuff I just mentioned to you is obviously of great interest. But the Constitutional Convention is going to get a telling that is different from what you got in your textbook. Let's just put it that way. Rothbard is not your seventh grade textbook. So what's Rothbard's story of the Constitutional Convention?

NEWMAN: So that's a great point. This certainly isn't the story you're going to get in your textbook or really in most other books on the Constitution. So as I mentioned before, the Constitutional Convention, when it's spoken about, he says, well, the Founding Fathers, they realized that the Articles of Confederation just wasn't working. The country was veering towards anarchy. There was chaos. There was too much decentralization. There wasn't a strong central government to properly coerce people into paying taxes, etc.

And so in the first two parts, Rothbard basically demolishes that, and he says that, well, the problems of the Articles of Confederation, to the extent that there were problems, it was from too much government. It was from basically trying to pay the debt at full value after the Revolutionary War. And actually, there wasn't like these battles of high tariffs between states. The Articles of Confederation, the unanimity requirement for raising taxes was very effective, etc. So first he goes through that.

But then when it comes to the Constitutional Convention, Rothbard is very clear that this was basically a coup, so to speak, where they were given the authority by the Confederation Congress to basically make amendments or at least start a convention to recommend amendments to the Articles of Confederation. And instead, through the impetus of famous Founding Fathers like James Madison and Alexander Hamilton, they really made a push to instead scrap that plan, and it just created an entirely new government.

And this government was not a confederation like the Articles of Confederation; it was really a central government that had a much stronger power to kick the states into line, to raise taxes, to raise standing armies, to fund its own debt, to pass uniform tariffs and navigation laws, etc. And so Rothbard in the Constitutional Convention, he goes through all of the debates, and it was really dominated by the groups he calls the Nationalists, who later called themselves Federalists for tactical effect.

And while there were many fights between the Nationalists over the extent of government power, or basically who would control the levers of power, or whether it was the large-state Nationalists or the small-state Nationalists, or how would slaves get represented, etc. — some of these are the classic discussions you hear about or you read about when you talk about the Constitutional Convention. Rothbard, of course, adds his own penetrating libertarian insights into these discussions, and how really, at the end of the day, the small group of anti-Federalists, who you might say were actually the true Federalists, they more or less tried to make changes or they tried to weaken the government, but they left the Constitutional Convention in disgust during its proceedings. But the Constitutional Convention, it was really a coup to illegally draft up a far stronger government that then subsequently they tried to sort of rammed down the public's throats.

WOODS: Yeah, I've always — and I know that my listeners, some of them are going to disagree with me, but I've always been uncomfortable with the idea it being a coup. And the reason is it had to be ratified by the states. All the states had to do is say no. A coup is quite different from that. A coup is not a situation where the states are surveyed, and then if they'd say no, then it doesn't go through. A coup just goes through, regardless. So the fact that they did send it out for ratification, the states could just simply have said no to it. So I don't agree with that. But nevertheless, I do agree that there were people with intentions that, in my opinion, are not honorable, who drove a lot of the debate and the discussion. Now, speaking of debate and discussion, he's got a state-by-state analysis of the record ratification debates. Now, is this just tiresome detail, or is there some merit in this?

NEWMAN: Oh, yes, so I think that the ratification debates are actually the strongest, my favorite section, my favorite part of the book, because I think at least — so in a sense, you are correct when like a coup, at least when you think about it, it's like they take over the government. I do think ,though, that it certainly has elements of a coup, because it wasn't done legally, at least through the government, where it had to go through the Confederation Congress. Instead, they only sent it to them, and then they said that, well, you only need 9 out of 13 of the states. I believe that was the number.

And then you actually look at the state governments, the actual ratification debates in the state governments. It wasn't through the state legislatures; it was through separate conventions, which the Federalists, as they now called themselves, were very clear that they did that simply to make it easier. There were a lot of dirty tricks that Rothbard goes through that the proponents of sort of the Constitution pushed through that really allowed the Constitution to get ratified in the states, some of them by very razor-thin margins, particularly in states like Virginia, New York, even Massachusetts. The most infamous of all was sort of Rhode Island.

And Rothbard goes through how it kind of wasn't a fair election. You had, one, the Federalists sort of controlled the mail, so they were able to control the discussion, and many times they lied, and they said certain people were supporting the Constitution when they didn't, or it took longer for anti-Federalists' mail to get through. The apportionment of delegates was skewed towards the East instead of the West, so that deprived the West of some votes. The Federalists bribed many delegates. A couple other dirty tricks.

And biggest of all was the fact that they promised a restrictive bill of rights after the Constitution was ratified. And they said, all right, we'll take your suggestions to consideration, we'll talk about the bill of rights, or at least what Rothbard says about the bill of rights later. But it wasn't, I guess some of you would say, what was a really fair election, so to speak. And I guess this is where sort of the elements of the coup come through, or at least a government sort of forced upon the people. I mean, most notably was little Rhode Island, which ratified after the government was started along in North Carolina, and they were basically threatened with retaliatory trade legislation, and they said it was pending in Congress. It was like, all right, if you don't ratify this, then we're going to drop the boom, so to speak. And they really kind of threatened the little state into submission.

And this is my favorite part of the book, simply because Rothbard goes through all of these battles in the state conventions. He goes through particularly the battles in Massachusetts and Virginia, Patrick Henry of Virginia, in New York the Clintonians, and really kind of brings some of these characters to life that you really don't hear about in normal discussions, and when you do hear about them, it's usually kind of dismissive, and they're not really appreciated.

WOODS: And finally, as you say, toward the end, there is a discussion of the Bill of Rights. So what do we get out of Rothbard? Like, what's the Rothbardian take on the Bill of Rights?

NEWMAN: So Rothbard basically said that, first of all, the Bill of Rights, during the constitutional process, during this fifth volume, James Madison — everyone knows Alexander Hamilton, right? He was a big proponent of big government. He was a big nationalist. He didn't really contribute a whole lot in the Constitutional Convention, simply because he was always outvoted by his New York delegation, which he was a part of, and he tried to push sort of a very monarchical form of government that other people sort of balked at, I guess you could say.

James Madison in many ways kind of comes across as the ultimate bad guy of the book, where he's a very strong nationalist, he really wants to push through a stronger government. He's really an anti-British, pro-Virginia nationalist, but that's a conversation I guess you'd save for another time. And one of the things he sort of had to promise or the Federalists had to promise was, all right, we're going to have a restrictive bill of rights, so it's going to be limits on the direct taxing powers, giving limits on standing armies, throw in some term limits. You're going to have the famous "all powers not expressly delegated to the federal government belong to the States," etc., etc.

And so Madison also had to promise this if he wanted to win the election to the House of Representatives, because Patrick Henry was sort of furiously trying to prevent him from winning in Virginia after the state ratified. And so then Madison basically realizes that now the anti-Federalists are going to try and push for a second constitutional convention, to sort of weaken the Constitution, to now push for all of the stuff that they wanted to get through, and that would totally throw everything up in the air, so to speak.

And Madison is like, all right, I've got to nip this thing in the bud, going for a bill of rights, I've got to push it through. And he had to fight some Federalists who thought that there was no need for a bill of rights, but what little anti-Federalists had power in the federal government were also very upset, because they go, wait a second, this isn't the thing that we wanted. This mostly dealt with personal liberty, which is laudatory in itself, but this wasn't the structural amendments that they had hoped for. So guys like Richard Henry Lee and William Grayson of Virginia and then many other people, etc., they were very — so they were both in Congress at the time there. They were very sort of upset with this. And then they realized, okay, half a loaf is better than no bread at all.

And it really was important, because really the main structural amendments you could say were the Ninth and Tenth Amendments. Now, I know Rothbard has some interpretations of this that other constitutional scholars may disagree with, but for him, I guess you could say the Tenth Amendment was structural in that it kind of returned the government to somewhat of a quasi-confederation. But the big thing is that he left out the word "expressly," and it was really all just the whole Bill of Rights was just sort of a, you could say, stratagem of Madison to really nip any sort of anti-Federalist resistance.

Now, of course, what Rothbard talks about at the end of the book, and this is equally important, is that the whole strict interpretation of the Constitution that even James Madison later employed for various reasons, as well as Thomas Jefferson and the anti-Federalists, that was all their way. They'd say, well, we're now going to argue the lie the Federalists told us, so to speak, and that we're now going to interpret all this as if it was just like the Articles or close enough to it. And that's a very fascinating discussion Rothbard briefly talks about that I think really kind of puts a new light on any of the sort of subsequent battles in American constitutional history.

WOODS: Well, we're going to leave it there for today. The book is, of course, *Conceived in Liberty, Volume 5*, linked at TomWoods.com/1524. It is a good time, by the way, to get the whole *Conceived in Liberty* series, but certainly, at the very least, just the sheer novelty of being able to read another book by Rothbard 24 years after his death, almost 25, it's just too much to pass up. It's just insane. It's insane how much he's released since his death, or has been released on his behalf. There were tremendous monographs that have been discovered, like about scientific research and the free market. There's been one on Wall Street banks and American foreign policy. That was like a long article he wrote for some obscure investment newsletter that nobody read, and no one else ever saw it after that. And Justin Raimondo made a publication out of it, put an introduction on it. That would have languished in obscurity. No one would ever have seen it again. These are the kind of gems that you can find. We found whole book manuscripts, books we could put together from essays he wrote on different topics. And now we have *Conceived in Liberty, Volume 5*. I am inclined to say this is the last Rothbard book. Do you have any reason to think I'm wrong?

NEWMAN: Aside from additional correspondence, more letters or reviews of manuscripts, papers, etc., that he did, yes, I would say you are correct, unless there's a closet in the archives I haven't seen yet [laughing].

WOODS: Yeah, you have to get special ninja access to that particular resource.

NEWMAN: Yes.

WOODS: All right, so TomWoods.com/1524 is where you can find an easy, quick link to get Volume 5 of *Conceived in Liberty*. Well, again, heroic work for which you will never be forgotten. You are now etched in history forever as a hero to the libertarian movement, Patrick Newman. Thanks a lot.

NEWMAN: Thank you so much.