

The Antifederalist Papers No. 39 Appearance and Reality - the Form is Federal; the Effect is National

The following excerpt is from the essays of "A FARMER." It appeared in the Philadelphia Independent Gazetteer on April 15 and 22, 1788

. . . . The Freeman, in his second number, after mentioning in a very delusory manner diverse powers which remain with the states, says we shall find many other instances under the constitution which require or imply the existence or continuance of the sovereignty and severalty of the states. He, as well as all the advocates of the new system, take as their strong ground the election of senators by the state legislatures, and the special representation of the states in the federal senate, to prove that internal sovereignty still remains with the States. Therefore they say that the new system is so far from annihilating the state governments, that it secures them, that it cannot exist without them, that the existence of the one is essential to the existence of the other. It is true that this particular partakes strongly of that mystery which is characteristic of the system itself. But if I demonstrate that this particular, so far from implying the continuance of the state sovereignties, proves in the clearest manner the want of it, I hope the other particular powers will not be necessary to dwell upon.

The State legislatures do not choose senators by legislative or sovereign authority, but by a power of ministerial agency as mere electors or boards of appointment. They have no power to direct the senators how or what duties they shall perform; they have neither power to censure the senators, nor to supersede them for misconduct. It is not the power of choosing to office merely that designates sovereignty, or else corporations who appoint their own officers and make their own by-laws, or the heads of department who choose the officers under them, such as commanders of armies, etc., may be called sovereigns, because they can name men to office whom they cannot dismiss therefrom. The exercise of sovereignty does not consist in choosing masters, such as the senators would be, who, when chosen, would be beyond control, but in the power of dismissing, impeaching, or the like, those to whom authority is delegated. The power of instructing or superseding of delegates to Congress under the existing confederation has never been complained of, although the necessary rotation of members of Congress has often been censured for restraining the state sovereignties too much in the objects of their choice. As well may the electors who are to vote for the president under the new constitution, be said to be vested with the sovereignty, as the State legislatures in the act of choosing senators. The senators are not even dependent on the States for their wages, but in conjunction with the federal representatives establish their own wages. The senators do not vote by States, but as individuals. The representatives also vote as individuals, representing people in a consolidated or national government; they judge upon their own elections, and, with the Senate, have the power of regulating elections in time, place and manner, which is in other words to say, that they have the power of elections absolutely vested in them.

That the State governments have certain ministerial and convenient powers continued to them is not denied, and in the exercise of which they may support, but cannot control the general government, nor protect their own citizens from the exertion of civil or military tyranny-and this ministerial power will continue with the States as long as two-thirds of Congress shall think their agency necessary. But even this will be no longer than two-thirds of Congress shall think proper to propose, and use the influence of which they would be so largely possessed to remove it.

But these powers of which the Freeman gives us such a profuse detail, and in describing which he repeats the same powers with only varying the terms, such as the powers of officering and training the militia, appointing State officers, and governing in a number of internal cases, do not any of them separately, nor all taken together, amount to independent sovereignty. They are powers of mere ministerial agency, which may, and in many nations of Europe are or have been vested, as before observed, in heads of departments, hereditary vassals of the crown, or in corporations; but not that kind of independent sovereignty which can constitute a member of a federal republic, which can enable a State to exist within itself if the general government should cease.

I have often wondered how any writer of sense could have the confidence to avow, or could suppose the people to be ignorant enough to believe that, when a State is deprived of the power not only of standing armies (this the members of a confederacy ought to be), but of commanding its own militia, regulating its elections, directing or superseding its representatives, or paying them their wages; who is, moreover, deprived of the command of any property, I mean source of revenue or taxation, or what amounts to the same thing, who may enact laws for raising revenue, but who may have these laws rendered nugatory, and the execution thereof superseded by the laws of Congress. [sic] This is not a strained construction, but the natural operation of the powers of Congress under the new constitution; for every object of revenues, every source of taxation, is vested in the general government. Even the power of making inspection laws, which, for obvious conveniency, is left with the several States, will be unproductive of the smallest revenue to the State governments; for, if any should arise, it is to be paid over to the officers of Congress. Besides, the words "to make all laws necessary and proper for carrying into execution the foregoing powers," etc., give, without doubt, the power of repelling or forbidding the execution of any tax law whatever, that may interfere with or impede the exercise of the general taxing power, and it would not be possible that two taxing powers should be exercised on the same sources of taxation without interfering with each other. May not the exercise of this power of Congress, when they think proper, operate not only to destroy those ministerial powers which are left with the States, but even the very forms? May they not forbid the state legislatures to levy a shilling to pay themselves, or those whom they employ, days' wages?

The State governments may contract for making roads (except post-roads), erecting bridges, cutting canals, or any other object of public importance; but when the contract is performed or the work done, may not Congress constitutionally prevent the payment? Certainly; they may do all this and much more, and no man would have a right to charge

them with breaking the law of their appointment. It is an established maxim, that wherever the whole power of the revenue or taxation is vested, there virtually is the whole effective, influential, sovereign power, let the forms be what they may. By this armies are procured, by this every other controlling guard is defeated. Every balance or check in government is only so far effective as it has a control over the revenue.

The State governments are not only destitute of all sovereign command of, or control over, the revenue or any part of it, but they are divested of the power of commanding or prescribing the duties, wages, or punishments of their own militia, or of protecting their life, property or characters from the rigors of martial law. The power of making treason laws is both a power and an important defense of sovereignty; it is relative to and inseparable from it; to convince the States that they are consolidated into one national government, this power is wholly to be assumed by the general government. All the prerogatives, all the essential characteristics of sovereignty, both of the internal and external kind, are vested in the general government, and consequently the several States would not be possessed of any essential power or effective guard of sovereignty. Thus I apprehend, it is evident that the consolidation of the States into one national government (in contra- distinction from a confederacy) would be the necessary consequence of the establishment of the new constitution, and the intention of its framers-and that consequently the State sovereignties would be eventually annihilated, though the forms may long remain as expensive and burdensome remembrances of what they were in the days when (although laboring under many disadvantages) they emancipated this country from foreign tyranny, humbled the pride and tarnished the glory of royalty, and erected a triumphant standard to liberty and independence.

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