

The Antifederalist Papers No. 49 On Constitutional Conventions (Part 1)

The following essay is in two parts: the first is by "MASSACHUSETTENSIS," and is reprinted from The Massachusetts Gazette of January 29, 1788; the second part was written by "AN OLD WHIG," and is taken from The New-York Journal of November 27, 1787.

That the new constitution cannot make a union of states, but only of individuals, and purposes the beginning of one new society, one new government in all matters, is evident from these considerations, viz: It marks no line of distinction between separate state matters, and what would of right come under the control of the powers ordained in a union of states. To say that no line could be drawn, is giving me the argument. For what can be more absurd than to say, that states are united where a general power is established that extends to all objects of government, i.e., all that exist among the people who make the compact? And is it not clear that Congress have the right (by the constitution), to make general laws for proving all acts, records, proceedings, and the effect thereof, in what are now called the states? Is it possible after this that any state act can exist, or any public business be done, without the direction and sanction of Congress, or by virtue of some subordinate authority? If not, how in the nature of things can there be a union of states? Does not the uniting of states, as states, necessarily imply the existence of separate state powers?

Again, the constitution makes no consistent, adequate provision for amendments to be made to it by states, as states. Not they who drew up the amendments (should any be made), but they who ratify them, must be considered as making them. Three fourths of the legislatures of the several states, as they are now called, may ratify amendments—that is, if Congress see fit, but not without. Where is then any independent state authority recognized in the plan? And if there is no independent state authority, how can there be a union of states? But is it not a question of importance why the states in their present capacity, cannot ratify the original? I mean, why the legislatures of the several states cannot do this business? I wish to be informed where to find the regular exercise and legal sanction of state power, if the legislative authority of the state is set aside. Have the people some other constitutional means by which they can give their united voice in state affairs? This leads me to observe, that should the new constitution be received as it stands, it can never be proved that it originated from any proper state authority; because there is no such authority recognized either in the form of it, or in the mode fixed upon for its ratification. It says, "We the people of the United States," etc., make this constitution; but does this phrase, "We the people of the United States," prove that the people are acting in state character, or that the several states must of necessity exist with separate governments? Who that understands the subject will believe either? ...

The plan does not acknowledge any constitutional state authority as necessary in the ratification of it. This work is to be done by a mere convention, only in consequence of

mere recommendation; which does by no means amount to a proper state act. As no state act can exist independent of the supreme authority of the state, and this authority is out of the question in the ratification of the new constitution, it clearly follows that the ratifying of it, by a mere convention, is no proper state business. To conclude, the people may make the original, but the people have no right to alter it. Congress may order this matter just as they please, and consequently have whom they please elected for governors or representatives, not of the states but of the people; and not of the people as men but as property. . .

MASSACHUSETTENSIS

It appears to me that I was mistaken in supposing that we could so very easily make trial of this constitution, and again change it at our pleasure. The conventions of the several states cannot propose any alterations-they are only to give their assent and ratification. And after the constitution is once ratified, it must remain fixed until two thirds of both the houses of Congress shall deem it necessary to propose amendments; or the legislatures of two thirds of the several states shall make application to Congress for the calling a convention for proposing amendments - which amendments shall not be valid until they are ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as one or the other mode of ratification may be proposed by Congress. This appears to me to be only a cunning way of saying that no alteration shall ever be made; so that whether it is a good constitution or a bad constitution, it will remain forever unamended. Lycurgus, when he promulgated his laws to the Spartans, made them swear that they would make no alterations in them until he should return from a journey which he was then about to undertake. He chose never to return, and therefore no alteration could be made in his laws. The people were made to believe that they could make trial of his laws for a few months or years, during his absence, and as soon as he returned they could continue to observe them or reject at pleasure. Thus this celebrated republic was in reality established by a trick. In like manner the proposed constitution holds out a prospect of being subject to be changed if it be found necessary or convenient to change it; but the conditions upon which an alteration can take place, are such as in all probability will never exist. The consequence will be that when the constitution is once established it never can be altered or amended without some violent convulsion or civil war.

The conditions, I say, upon which any alterations can take place, appear to me to be such as never will exist. Two thirds of both houses of congress, or the legislatures of two thirds of the states, must agree in desiring a convention to be called. This will probably never happen. But if it should happen, then the convention may agree to the amendments or not, as they think right; and after all three fourths of the states must ratify the amendments. Before all this labyrinth can be traced to a conclusion, ages will revolve, and perhaps the great principles upon which our late glorious revolution was founded, will be totally forgotten. If the principles of liberty are not firmly fixed and established in the present constitution, in vain may we hope for retrieving them hereafter. People once possessed of power are always loathe to part with it; and we shall never find two thirds of a Congress voting or proposing anything which shall

derogate from their own authority and importance, or agreeing to give back to the people any part of those privileges which they have once parted with-so far from it, that the greater occasion there may be for a reformation, the less likelihood will there be of accomplishing it. The greater the abuse of power, the more obstinately is it always persisted in. As to any expectation of two thirds of the legislatures concurring in such a request, it is if possible still more remote. The legislatures of the states will be but forms and shadows, and it will be the height of arrogance and presumption in them, to turn their thoughts to such high subjects. After this constitution is once established, it is too evident that we shall be obliged to fill up the offices of assemblymen and councillors, as we do those of constables, by appointing men to serve whether they will or not, and fining them if they refuse. The members thus appointed, as soon as they can hurry through a law or two for repairing highways, or impounding cattle, will conclude the business of their sessions as suddenly as possible, that they may return to their own business. Their heads will not be perplexed with the great affairs of state. We need not expect two thirds of them ever to interfere in so momentous a question as that of calling a continental convention. The different legislatures will have no communication with one another, from the time of the new constitution being ratified to the end of the world. Congress will be the great focus of power as well as the great and only medium of communication from one state to another. The great and the wise and the mighty will be in possession of places and offices; they will oppose all changes in favor of liberty; they will steadily pursue the acquisition of more and more power to themselves and their adherents....

AN OLD WHIG