

Antifederalist No. 45

Powers of National Government Dangerous to State Governments; New York as an Example

Robert Yates, a delegate to the 1787 convention from New York, left on July 10, 1787. He became an Antifederalist leader. Under the nome de plume "Sydney" he wrote in the New York Daily Patriotic Register, June 13 and 14, 1788.

Although a variety of objections to the proposed new constitution for the government of the United States have been laid before the public by men of the best abilities, I am led to believe that representing it in a point of view which has escaped their observation may be of use, that is, by comparing it with the constitution of the State of New York.

The following contrast is therefore submitted to the public, to show in what instances the powers of the state government will be either totally or partially absorbed, and enable us to determine whether the remaining powers will, from those kind of pillars, be capable of supporting the mutilated fabric of a government which even the advocates for the new constitution admit excels "the boasted models of Greece or Rome, and those of all other nations, in having precisely marked out the power of the government and the rights of the people."

It may be proper to premise that the pressure of necessity and distress (and not corruption) had a principal tendency to induce the adoption of the state constitutions and the existing confederation; that power was even then vested in the rulers with the greatest caution; and that, as from every circumstance we have reason to infer that the Dew constitution does not originate from a pure source, we ought deliberately to trace the extent and tendency of the trust we are about to repose, under the conviction that a reassumption of that trust will at least be difficult, if not impracticable. If we take a retrospective view of the measures of Congress. . . . we can scarcely entertain a doubt but that a plan has long since been framed to subvert the confederation; that that plan has been matured with the most persevering industry and unremitting attention; and that the objects expressed in the preamble to he constitution, that is "to promote the general welfare and secure the blessings of liberty to ourselves and our posterity," were merely the ostensible, and not the real reasons of its framers. . .

The state governments are considered in . . . [the new constitution] as mere dependencies, existing solely by its toleration, and possessing powers of which they may be deprived whenever the general government is disposed so to do. If then the powers of the state governments are to be totally absorbed, in which all agree, and only differ as to the mode -- whether it will be effected by a rapid progression, or by as certain, but slower, operations -- what is to limit the oppression of the general government? Where are the rights, which are declared to be incapable of violation? And what security have people against the wanton oppression of unprincipled

governors? No constitutional redress is pointed out, and no express declaration is contained in it, to limit the boundaries of their rulers. Beside which the mode and period of their being elected tends to take away their responsibility to the people over whom they may, by the power of the purse and the sword, domineer at discretion. Nor is there a power on earth to tell them, What dost thou? or, Why dost thou so? I shall now proceed to compare the constitution of the state of New York with the proposed federal government, distinguishing the paragraphs in the former, which are rendered nugatory by the latter; those which are in a great measure enervated, and such as are in the discretion of the general government to permit or not....

1 & 37

The 1st "Ordains, determines, and declares that no authority shall on any pretence whatever be exercised over the people or the members of this State, but such as shall be derived from and granted by them."

The 37th, "That no purchases or contracts for the sale of lands with or of the Indians within the limits of this state, shall be binding on the Indians, or deemed valid, unless made under the authority and with the consent of the legislature of this state."

. . . What have we reasonably to expect will be their conduct [i.e., the new national government] when possessed of the powers "to regulate commerce with foreign nations, and among the several states, and with the Indian tribes," when they are armed with legislative, executive, and judicial powers, and their laws the supreme laws of the land. And when the states are prohibited, without the consent of Congress, to lay any "imposts or duties on imports," and if they do they shall be for the use of the Treasury of the United States -- and all such laws subject to the revision and control of Congress.

It is . . . evident that this state, by adopting the new government, will enervate their legislative rights, and totally surrender into the hands of Congress the management and regulation of the Indian trade to an improper government, and the traders to be fleeced by iniquitous impositions, operating at one and the same time as a monopoly and a poll-tax. . . .

The 2nd provides "that the supreme legislative power within this state shall be vested in two separate and distinct bodies of men, the one to be called the assembly, and the other to be called the senate of the state of New York, who together shall form the legislature."

The 3rd provides against laws that may be hastily and inadvertently passed, inconsistent with the spirit of the constitution and the public good, and that "the governor, the chancellor and judges of the supreme court, shall revise all bills about to be passed into laws, by the legislature."

The 9th provides "that the assembly shall be the judge of their own members, and enjoy the same privileges, and proceed in doing business in like manner as the assembly of the colony of New York of right formerly did."

The 12th provides "that the senate shall, in like manner, be judges of their own members," etc.

The 31st describes even the style of laws -- that the style of all laws shall be as follows: "Be it enacted by the people of the state of New York represented in senate and assembly," and that all writs and proceedings shall run in the name of the people of the state of New York, and tested in the name of the chancellor or the chief judge from whence they shall issue.

The powers vested in the legislature of this state by these paragraphs will be weakened, for the proposed new government declares that "all legislative powers therein granted shall be vested in a congress of the United States, which shall consist of a senate and a house of representatives," and it further prescribes, that "this constitution and the laws of the United States, which shall be made in pursuance thereof; and all treaties made, or which shall be made under the authority of the United States, shall be the supreme law of the land, and the judges in every state shall be bound thereby, anything in the constitution or laws of any state to the contrary notwithstanding; and the members of the several state legislatures, and all executive and judicial officers, both of the United States and of the several states, shall be bound by oath or affirmation to support this constitution."

Those who are full of faith, suppose that the words "in pursuance thereof" are restrictive, but if they reflect a moment and take into consideration the comprehensive expressions of the instrument, they will find that their restrictive construction is unavailing, and this is evidenced by 1st art., 8th sect., where this government has a power "to lay and collect all taxes, duties, imposts and excises, to pay the debts, and provide for the common defense and general welfare of the United States," and also "to make all laws which shall be necessary and proper for carrying into execution the foregoing powers vested by this constitution in the government of the United States, or in any department or office thereof."

. . . . To conclude my observation on this head, it appears to me as impossible that these powers in the state constitution and those in the general government can exist and operate together, as it would be for a man to serve two masters whose interests clash, and secure the approbation of both. Can there at the same time and place be and operate two supreme legislatures, executives, and judicials? Will a "guarantee of a republican form of government to every state in the union" be of any avail, or secure the establishment and retention of state rights?

If this guarantee had remained, as it was first reported by the committee of the whole house, to wit, "that a republican constitution, and its existing laws, ought to be guaranteed to each state by the United States," it would have been substantial; but the changing the word constitution into the word form bears no favorable appearance. . . .

13, 35, 41

By the 13th paragraph "no member of this State shall be disfranchised, or deprived of any of the rights or privileges secured to the subjects of the State by the constitution, unless by the law of the land, or judgment of its peers."

The 35th adopts, under certain exceptions and modifications, the common law of England, the statute law of England and Great Britain, and the acts of the legislature of the colony, which together formed the law on the 19th of April, 1775.

The 41st provides "that the trial by jury remain inviolate forever; that no acts of attainder shall be passed by the legislature of this State for crimes other than those committed before the termination of the present war. And that the legislature shall at no time hereafter institute any new courts but such as shall proceed according to the course of the common law.

There can be no doubt that if the new government be adopted in all its latitude, every one of these paragraphs will become a dead letter. Nor will it solve any difficulties, if the United States guarantee "to every state in the union a republican form of government;" we may be allowed the form and not the substance, and that it was so intended will appear from the changing the word constitution o the word form and the omission of the words, and its existing laws. And I do not even think it uncharitable to suppose that it was designedly done; but whether it was so or not, by leaving out these words the jurisprudence of each state is left to the mercy of the new government....

17, 18, 19, 20, 21, 27, 40

The 17th orders "That the supreme executive power and authority of this State shall be vested in a governor."

By the 18th he is commander-in-chief of the militia and admiral of the navy of the State; may grant pardons to all persons convicted of crimes; he may suspend the execution of the sentence in treason or murder.

By the 19th paragraph he is to see that the laws and resolutions of the legislature be faithfully executed.

The 20th and 21st paragraphs give the lieutenant-governor, on the death, resignation, removal from office, or impeachment of the governor, all the powers of a governor.

By the 27th he [the Governor] is president of the council of appointment, and has a casting vote and the commissioning of all officers.

The 40th paragraph orders that the militia at all times, both in peace and war, shall be armed and disciplined, and kept in readiness; in what manner the Quakers shall be excused; and that a magazine of warlike stores be forever kept at the expense of the State, and by act of the legislature, established, maintained, and continued in every county in the State.

Whoever considers the following powers vested in the [national] government, and compares them with the above, must readily perceive they are either all enervated or annihilated.

By the 1st art., 8th sec., 15th, 16th and 17th clauses, Congress will be empowered to call forth the militia to execute the laws of the union, suppress insurrections and repel invasions; to provide for organizing, arming and disciplining the militia, for the governing such part of them as may be employed in the service of the United States, and for the erection of forts, magazines, etc.

And by the 2nd art., 2nd sec., "The president shall be commander-in-chief of the army and navy of the United States, and of the militia of the several States when called into actual service of the United States. . . . except in cases of impeachment."

And by the 6th art., "The members of the several state legislatures, and all the executive and judicial officers; both of the United States, and of the several states, shall be bound by oath or affirmation to support the constitution."

Can this oath be taken by those who have already taken one under the constitution of this state? ... From these powers lodged in Congress and the powers vested in the states, it is clear that there must be a government within a government; two legislative, executive, and judicial powers. The power of raising an army in time of peace, and to command the militia, will give the president ample means to enforce the supreme laws of the land. . . .

42

This paragraph provides "that it shall be in the discretion of the legislature to naturalize all such persons and in such manner as they shall think proper."

The 1st art., 8th sec., 4th clause, give to the new government power to establish a uniform rule of naturalization. And by the 4th art., 2nd sec., "the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states," whereby the clause is rendered entirely nugatory.

From this contrast it appears that the general government, when completely organized, will absorb all those powers of the state which the framers of its constitution had declared should be only exercised by the representatives of the people of the state; that the burdens and expense of supporting a state establishment will be perpetuated; but its operations to ensure or contribute to any essential measures promotive of the happiness of the people may be totally prostrated, the general government arrogating to itself the right of interfering in the most minute objects of internal police, and the most trifling domestic concerns of every state, by possessing a power of passing laws "to provide for the general welfare of the United States," which may affect life, liberty and property in every modification they may think expedient, unchecked by cautionary reservations, and unrestrained by a declaration of any of those rights which the wisdom and prudence of America in the year 1776 held ought to be at all events protected from violation.

In a word, the new constitution will prove finally to dissolve all the power of the several state legislatures, and destroy the rights and liberties of the people; for the power of the first will be all in all, and of the latter a mere shadow and form without substance, and if adopted we may (in imitation of the Carthaginians) say, *Delenda vit America*.

SYDNEY