

#1. Some said, “We don’t have the power and should not proceed.”

Patrick Henry

“That they exceeded their power is perfectly clear... The federal convention ought to have amended the old system—for this purpose they were solely delegated. The object of their mission extended to no other considerations.”¹

Robert Whitehill

“Can it then be said that the late convention did not assume powers to which they had no legal title? On the contrary, Sir, it is clear that they set aside the laws under which they were appointed, and under which alone they could derive any legitimate authority, they arrogantly exercised any powers that they found convenient to their object, and in the end they have overthrown that government which they were called upon to amend, in order to introduce one of their own fabrication.”²

William Paterson (New Jersey delegate)

“We ought to keep within its limits, or we should be charged by our constituents with usurpation . . . let us return to our States, and obtain larger powers, not assume them of ourselves.”³

Charles Pinckney (South Carolina delegate) & Elbridge Gerry (Massachusetts delegate)

“General PINCKNEY expressed a doubt whether the act of Congress recommending the Convention, or the commissions of the Deputies to it, would authorize a discussion of a system founded on different principles from the Federal Constitution. Mr. GERRY seemed to entertain the same doubt.”⁴

John Lansing (New York delegate)

“the power of the Convention was restrained to amendments of a Federal nature . . . The acts of Congress, the tenor of the acts of the States, the commissions produced by the several Deputations, all proved this. . . . It was unnecessary and improper to go further.”⁵

Luther Martin (Maryland delegate)

“...we apprehended but one reason to prevent the states meeting again in convention; that, when they discovered the part this Convention had acted, and how much its members were abusing the trust reposed in them, the states would never trust another convention.”⁶

#2. Others said, “We don’t have the power but should proceed anyway.”

Edmund Randolph (Virginia delegate)

“Mr. Randolph. was not scrupulous on the point of power. When the salvation of the Republic was at stake, it would be treason to our trust, not to propose what we found necessary.”⁷ “There are great seasons when persons with limited powers are justified in exceeding them, and a person would be contemptible not to risk it.”⁸

Alexander Hamilton (New York delegate)

“The States sent us here to provide for the exigencies of the Union. To rely on and propose any plan not adequate to these exigencies, merely because it was not clearly within our powers, would be to sacrifice the means to the end.”⁹

James Madison (Virginia delegate)

“...it is therefore essential that such changes be instituted by some informal and unauthorized propositions....”¹⁰

George Mason (Virginia delegate)

“in certain seasons of public danger it is commendable to exceed power. The treaty of peace, under which we now enjoy the blessings of freedom, was made by persons who exceeded their powers. It met the approbation of the public, and thus deserved the praises of these who sent them.”¹¹

James Wilson (Pennsylvania delegate)

“The Federal Convention did not act at all upon the powers given to them by the states, but they proceeded upon original principles, and having framed a Constitution which they thought would promote the happiness of their country, they have submitted it to [the people for] their consideration, who may either adopt or reject it, as they please.”¹²

#3a. NONE said, “The 1787 convention acted well within their state delegated power.”

No such citations exist from the Founding era.

Claims of this nature originated with modern convention promoters, and are pure historical revisionism.

In fact, Judge Caleb Wallace, a supporter of the new constitution, was so concerned about the precedent the “runaway” convention had set, he advocated re-doing the entire convention, with full authority granted first! Said he:

“I think the calling another continental Convention should not be delayed . . . for [the] single reason, if no other, that it was done by men who exceeded their Commission, and whatever may be pleaded in excuse from the necessity of the case, something certainly can be done to disclaim the dangerous president [i.e., precedent] which will otherwise be established.”¹³

Rather, to justify the actions of the 1787 convention having “departed from the tenor of their commission” issued by the states,¹⁴ they pointed to a higher power as the source for their authority: **THE PEOPLE THEMSELVES.**

#3b. As stated in the Mason and Wilson quotes above, and the following, they appealed to the ultimate, sovereign power of the PEOPLE (not the state commissions) for their authority.

“The people were in fact, the fountain of all power, and by resorting to them, all difficulties were got over. They could alter constitutions as they pleased.”¹⁵ - Madison

“a rigid adherence in such cases to the former [limits of power imposed by the states], would render nominal and nugatory the transcendent and precious right of the people to abolish or alter their governments as to them shall seem most likely to effect their safety and happiness”¹⁶ - Madison

“The plan to be framed and proposed was to be submitted to the people themselves, the disapprobation of this supreme authority would destroy it forever. . . .”¹⁷ - Madison

“Col. Mason: The Legislatures have no power to ratify it. They are the mere creatures of the State Constitutions, and cannot be greater than their creators . . . Whither then must we resort? To the people with whom all power remains that has not been given up in the Constitutions derived from them.”¹⁸

¹ Virginia Ratifying Convention, June 4, 1788² Pennsylvania Ratifying Convention, 28 Nov. 1787³ Madison’s notes of the 1787 convention, 16 June 1787⁴ Madison’s notes of the 1787 convention, 30 May 1787⁵ Madison’s notes of the 1787 convention, 16 June, 1787, comments of Delegate John Lansing, Jr. from New York, who LEFT the Convention July 10th after realizing they exceeded their authority.⁶ Letter by Luther Martin, opposing ratification of the 1787 Constitution, http://oll.libertyfund.org/titles/1905#Elliot_1314-01_3767⁷ Madison’s notes of the 1787 convention, 16 June 1787⁸ Farrand’s Records of the 1787 convention, 16 June 1787⁹ Madison’s notes of the 1787 convention, 18 June 1787¹⁰ Madison, Federalist 40¹¹ Robert Yates’ notes of the 1787 convention, 20 June 1787¹² Pennsylvania Ratifying Convention, 26 Nov. 1787¹³ Judge Caleb Wallace to William Fleming, 3 May 1788¹⁴ Madison, Federalist 40¹⁵ Madison’s notes of the 1787 convention, 31 Aug 1787¹⁶ Madison, Federalist 40¹⁷ Madison, Federalist 40¹⁸ George Mason, Madison’s notes of the 1787 convention, 23 Jul 1787

Notably, court decisions have continued to follow the 1787 precedent, declaring conventions empowered to draft or amend constitutions represent the **people**, not the states, and cannot have their power limited by the state legislatures.

Corpus Juris Secundum (a legal summary of 5 court decisions)

"The members of a Constitutional Convention are the direct representatives of the people and, as such, they may exercise all sovereign powers that are vested in the people of the state. They derive their powers, not from the legislature, but from the people; and, hence, **their power may not in any respect be limited or restrained by the legislature.** Under this view, it is a Legislative Body of the Highest Order and may not only frame, but may also enact and promulgate, [a] Constitution,"

- *Corpus Juris Secundum* 6 C.J.S. 9, Cases cited: Mississippi (1892) Sprule v. Federicks; 11 So. 472, Iowa (1883) Koehler v. Hill; 14 N.W. 738, West Virginia (1873) Loomis v. Jackson; 6 W. Va. 613, Oklahoma (1907) Frantz v. Aury; 91 p. 193, Texas (1912) Cox v. Robison; 150 S.W. 1149

Additionally, numerous state conventions have also declared they represent the power of the **people**, not the legislature, and cannot have any limits placed upon their power:

"We have been told by the honorable gentleman from Albany (Mr. Van Vechten) that we were not sent here to deprive any portion of the community of their vested rights. Sir, the people are here themselves. They are present by their delegates. **No restriction limits our proceedings.** What are these vested rights? Sir, we are standing upon the foundations of society. The elements of government are scattered around us. All rights are buried; and from the shoots that spring from their grave we are to weave a bowers that shall overshadow and protect our liberties."

- Mr. Livingston, New York Convention of 1821

"When the people, therefore, have elected delegates, ... and they have assembled and organized, then a peaceable revolution of the State government, so far as the same may be effected by amendments of the Constitution, has been entered upon, limited only by the Federal Constitution. **All power incident to the great object of the Convention belongs to it.** It is a virtual assemblage of the people of the State, sovereign within its boundaries, as to all matters connected with the happiness, prosperity and freedom of the citizens, and supreme in the exercise of all power necessary to the establishment of a free constitutional government, except as restrained by the Constitution of the United States." - Report, The Committee on Printing of the Illinois Convention of 1862

"He had and would continue to vote against any

and every proposition which would recognize any restriction of the powers of this Convention.

We are... the sovereignty of the State. We are what the people of the State would be, if they were congregated here in one mass meeting. We are what Louis XIV said he was, "We are the State."

Illinois Convention of 1847

"It is far more important that a constitutional convention should possess these safeguards of its independence than it is for an ordinary legislator; because the convention acts are of a more momentous and lasting consequence and because it has to pass upon the power,

judicial and legislative officers who might otherwise interfere with it. The convention furnishes the only way by which the people can exercise their will, in respect of these officers, and their control over the convention would be wholly incompatible with the free exercise of that will." - Ellihu Root, Proceedings of the New York Constitutional Convention, 1894, pages 79-

80.

Courts decisions and state conventions have followed the precedent set by the 1787 constitutional convention. As the 1787 convention did, a convention today can ignore limits of power imposed by the states, and appeal to the ultimate power of the people themselves. State legislatures have no reason to expect they can control the convention.

Thus, a "limited" convention is a myth.

"We are told that we assume the power, and that we are merely the agents and attorneys, of the people. Sir, we are the delegates of the people, chosen to act in their stead. We have the same power and the same right, within the scope of the business assigned to us, that they would have, were they all convened in this hall." - Benjamin F. Butler, Massachusetts Convention of 1853

"Sir, that this Convention of the people is sovereign, possessed of sovereign power, is as true as any proposition can be. If the State is sovereign the Convention is sovereign. If this Convention here does not represent the power of the people, where can you find its representative? If sovereign power does not reside in this body, there is no such thing as sovereignty." - General Singleton, speech, The Committee on Printing of the Illinois Convention of 1862.