

Historical Precedent: Was the 1787 Convention a “runaway” convention?

#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)

“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)

“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

Alexander Hamilton (New York)

“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.”⁸

James Madison (Virginia)

“...it is therefore essential that such changes be instituted by some informal and unauthorized propositions...”⁹

George Mason (Virginia)

In answering John Lansing’s concern of “the want of competent powers in the Convention” to make the changes they were proposing, George Mason justified exceeding their powers, “there were besides certain crises, in which all the ordinary cautions yielded to public necessity.”¹⁰

#3a. NONE said, “The 1787 convention acted well within their state delegate 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 precedent [i.e., precedent] which will otherwise be established.”¹¹

Rather, to justify the actions of the 1787 convention having “departed from the tenor of their commission” issued by the states,¹² they pointed to a higher power as the source for their authority: **THE PEOPLE THEMSELVES.**

#3b. 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.”¹³

“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”¹⁴

“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. . .”¹⁵

“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.”¹⁶

¹ June 4, 1788, Speech at the Virginia Ratifying Convention

² Pennsylvania Ratifying Convention, 28 Nov. 1787

³ Madison’s notes of the 1787 convention, 16 June 1787

⁴ Madison’s notes of the 1787 convention, 30 May 1787

⁵ 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_3767

⁷ Madison’s notes of the 1787 convention, 16 June 1787

⁸ Madison’s notes of the 1787 convention, 18 June 1787

⁹ Madison, Federalist 40

¹⁰ Madison’s notes of the 1787 convention, 20 June 1787

¹¹ Judge Caleb Wallace to William Fleming, 3 May 1788

¹² Madison, Federalist 40

¹³ Madison, Madison’s notes of the 1787 convention, 31 Aug 1787

¹⁴ Madison, Federalist 40

¹⁵ Madison, Federalist 40

¹⁶ George Mason, Madison’s notes of the 1787 convention, 23 Jul 1787

Legal Precedent: Conventions represent the ultimate sovereign power of the people

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 16 C.J.S 9, Cases cited: Mississippi (1892) Sproule v. Fredericks; 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. Autry; 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 bower 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.' **We can trample the Constitution under our feet as waste paper, and no one can call us to account save the people.**" - Onslow Peters, 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 legislature; because the convention acts are of a more momentous and lasting consequence and because it has to pass upon the power, emoluments and the very existence of the **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." - Elihu Root, Proceedings of the New York Constitutional Convention, 1894, pages 79-80.

"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.

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.