

Center *for the Study of the* American Constitution

NO. 15: ELBRIDGE GERRY'S OPPOSITION TO THE CONSTITUTION

In March 1787 the Massachusetts legislature elected Elbridge Gerry as one of its five delegates to the Constitutional Convention, where he was a very active delegate in speaking and making motions. On 17 September 1787, the last day of the Convention, Gerry refused to sign the Constitution fearing that the new government it would create would endanger the powers of the states and the liberties of the people. Gerry left Philadelphia and stayed in New York City on private business for six weeks. In an 18 October letter to his friend James Warren, the speaker of the Massachusetts House of Representatives, Gerry gave his "opinion" that the new Constitution would "lay the foundation of a Government, of *force & fraud*, that the people will bleed with taxes at every pore, & that the existence of their liberties will soon be terminated." On the same day, Gerry outlined his objections to the Constitution in a letter to the Massachusetts General Court (the state legislature). Gerry indicated that he would give his full reasoning to the legislature when he returned to Massachusetts.

On 25 October the Massachusetts legislature authorized the election of a convention to consider the Constitution. Six days later, Gerry's letter was read in the state Senate and then, on 2 November, in the state House of Representatives. The Senate ordered the letter printed in the newspapers, where it appeared for the first time in the *Massachusetts Centinel* on 3 November. Within three weeks, the other ten Massachusetts newspapers had printed the letter, and by 4 January 1788 the letter had been reprinted in thirty-one other newspapers throughout the country.

A couple of newspaper writers requested that Rufus King and Nathaniel Gorham, Gerry's two colleagues at the Constitutional Convention, should "publish their reasons" for signing the Constitution. Such a public statement "in the newspapers," they asserted, would "clear up this matter properly." King and Gorham drafted a point-by-point response to Gerry's objections, but it was never published. Gorham later regretted not having published an answer to Gerry, saying that "Gerry's Letter has done infinite mischief."

Other Federalists responded quickly and bitterly, attacking Gerry's arguments and him personally. Henry Jackson, a Boston merchant, declared that Gerry's "infamous" letter "has done more injury to this Country . . . than he will be able to make atonement in his whole life." Jackson stated that Gerry had been under no obligation to address the legislature, and he claimed that Gerry "had given his Honor to Mr. K [Rufus King] that he should not—*damn him—damn him.*" Jackson then indicated that King would remain in Boston until Gerry arrived from New York in order "to counteract any expressions he may make on the members of the Legislature previous to their return home. This will be a matter of great concern in the choice of the members for the [state] Convention."

Outside Massachusetts, Oliver Ellsworth, a Connecticut delegate to the Constitutional Convention, wrote the principal response to Gerry's letter in a series titled "Landholder." "Landholder" accused Gerry of expressing his objections "in such vague and indecisive terms, that they rather deserve the name of insinuations, and we know not against what particular parts of the system they are pointed." He rejected Gerry's assertions that the people were not adequately represented in Congress, that some of the Constitution's powers were ambiguous, that the president would have excessive influence over Congress, and that the judiciary would be oppressive. Additionally, "Landholder" charged Gerry with not raising his objections during the Constitutional Convention and with consulting other

Antifederalists before writing his objections. It was asserted that Gerry's objections stemmed solely from the Convention's rejection of his proposal to redeem Continental currency, which Gerry allegedly held in large amounts. Lastly, "Landholder" accused Gerry of seeking favor with Shaysites. ■

ELBRIDGE GERRY TO THE MASSACHUSETTS GENERAL COURT 18 OCTOBER 1787*

GENTLEMEN, I have the honour to inclose, pursuant to my commission, the constitution proposed by the federal Convention.

To this system I gave my dissent, and shall submit my objections to the honourable Legislature.

It was painful for me, on a subject of such national importance, to differ from the respectable members who signed the constitution: But conceiving as I did, that the liberties of America were not secured by the system, it was my duty to oppose it.—

My principal objections to the plan, are, that there is no adequate provision for a representation of the people—that they have no security for the right of election—that some of the powers of the Legislature are ambiguous, and others indefinite and dangerous—that the Executive is blended with and will have an undue influence over the Legislature—that the judicial department will be oppressive—that treaties of the highest importance may be formed by the President with the advice of two thirds of a *quorum* of the Senate—and that the system is without the security of a bill of rights. These are objections which are not local, but apply equally to all the States.

As the Convention was called for "the *sole* and *express* purpose of revising the Articles of Confederation, and reporting to Congress and the several Legislatures such alterations and provisions as shall render the Federal Constitution adequate to the exigencies of government and the preservation of the union," I did not conceive that these powers extended to the formation of the plan proposed, but the Convention being of a different *opinion*, I acquiesced in *it*, being fully convinced that to preserve the union, an efficient government was indispensibly necessary; and that it would be difficult to make proper amendments to the articles of Confederation.

The Constitution proposed has few, if any *federal* features, but is rather a system of *national* government:

Nevertheless, in many respects I think it has great merit, and by proper amendments, may be adapted to the "exigencies of government," and preservation of liberty.

The question on this plan involves others of the highest importance—1st. Whether there shall be a dissolution of the *federal* government? 2dly. Whether the several State Governments shall be so altered, as in effect to be dissolved? and 3dly. Whether in lieu of the *federal* and *State* Governments, the *national* Constitution now proposed shall be substituted without amendment? Never perhaps were a people called on to decide a question of greater magnitude—Should the citizens of America adopt the plan as it now stands, their liberties may be lost: Or should they reject it altogether Anarchy may ensue. It is evident therefore, that they should not be precipitate in their decisions; that the subject should be well understood, lest they should refuse to *support* the government, after having *hastily* accepted it. . . .

It may be urged by some, that an *implicit* confidence should be placed in the Convention: But, however respectable the members may be who signed the Constitution, it must be admitted, that a free people are the proper guardians of their rights and liberties—that the greatest men may err—and that their errors are sometimes, of the greatest magnitude.

Others may suppose, that the Constitution may be safely adopted, because therein provision is made to *amend* it: But cannot *this object* be better attained before a ratification, than after it? And should a *free* people adopt a form of Government, under conviction that it wants amendment?

And some may conceive, that if the plan is not accepted by the people, they will not unite in another: But surely whilst they have the power to amend, they are not under the necessity of rejecting it.

I have been detained here longer than I expected, but shall leave this place in a day or two for Massachusetts, and on my arrival shall submit the reasons (if required by the Legislature) on which my objections are grounded.

I shall only add, that as the welfare of the union requires a better Constitution than the Confederation, I shall think it my duty as a citizen of Massachusetts, to support that

which shall be finally adopted, sincerely hoping it will secure the liberty and happiness of America.

*The transcription is taken from the *Massachusetts Centinel*, 3 November 1787.

RUFUS KING AND NATHANIEL GORHAM UNPUBLISHED RESPONSE TO GERRY'S OBJECTIONS

The provision in the report of the Convention authorises one Rep. for every 30,000 Inhab. ascertained as is there proposed—from the best materials that have been collected the united States at this Time contain 3 mils. of Inhab. comprehending all the Free Inhabitants & 3/5 only of the Slaves—this number wd. give 100 Rep—it is true that the first house will consist of only 65 Members, but the Congress must cause the Numbers of Inhab. to be taken within 3 yrs, and may do it within one—If the present Numbers will give 100 Reps. and the Opinion is well founded which we take to be the Case, that the people of america double in 25 yrs, then in 25 yrs. the Number of Reps may be 200, in 50 years 400, in 75 years 800, and in One Century 1600—it is true that the Rept. does not make it *necessary* that the Members shall be thus increased, in a direct proportion with the increase of the Inhab. but only declares that they shall not *exceed* one for every thirty thousand; they may be less, they may be in that proportion, but they cannot be more numerous—this indeed appears to us a sufficient provision to produce such a Reprn. of the people in the house of Reps as will completely and safely accomplish the objects of their Appointment.

The 2d. objection “that the people have no security for the right of Election” is in our Judgment as destitute of foundation as the first—Mr. Gerry admits the right of Election to be well deposited he agrees that only the Electors of Representatives to the most numerous Br. of the state Legislature ought to be Electors of Representatives to the federal Govt. and then asserts that the exercise of this Right vested by the Rept. in the Electors is not secured—we are at a loss to know how Mr. Gerry would support this assertion or where the Report is defective on this point—the Time place & manner of electing Representatives must in the first instance be prescribed by the state Legislatures, but the Congress may make or alter the regulations on this Subject, possibly Mr. G. may ground his Objection upon this authority's being vested in Congress—we wish to submit our remarks on this clause to your candid consideration—we agree and have always contended

that the people ought to enjoy the exclusive right of appointing their Rep. but we also hold it an important principle that as it is of consequence to the Freedom of the people that they should possess the right of Election so it is essential to the preservation & Existence of the Government that the people should be bound to exercise it for this reason in the Constitution of Massachusetts not only the persons are clearly designated and their Qualifications ascertained, who may vote for Representatives, but the Genl. Court have a right to compel the Electors to exercise their rights of elections, and thereby to preserve the Government from Dissolution—

If the Time place and manner of electing Representatives to the General Court was left entirely to the several Towns in the Commonwealth and if the constitution gave no power to the Genl. Court to require and compel the Towns to Elect Representatives, there wd. be a manifest defect in the Constitution, which agreeably to the Course of human Affairs might in a short-period subvert the Government—Town after Town from disaffection or other motives might refuse to elect Representatives, Counties & larger districts might combine against sending members to the General Court, and in this silent manner the Govt might be wholly destroyed—If these remarks are just as applying to this State and prove the propriety of vesting as the Constitution has done a power in the Genl. Court to compel the Electors to exercise their right of Election, they are equally just in Relation to Congress, and equally prove the propriety of vesting in that assembly a power to compel the Electors of the federal Representatives to exercise their rights, and for that purpose if necessary to make Regulations concerning the Time place & manner of electing members of the H. of Reps—

It may be said that the State Legislatures are more capable of regulating this Subject than the Congress; that Congress may fix improper places, inconvenient Times, and a manner of electing contrary to the usual practice of the several States, it is not a very probable supposition that a law of this Nature shd. be enacted by the Congress but let the supposition be ever so probable as applied to cong. it is thirteen Times more probable that some one of the States may make these inconvenient Regulations than that Congress should enact them Congress will be interested to preserve the United States entire and to prevent a dismemberment—the individual States may some of them grow rich & powerful; and as the great members of the antient Confederacies have heretofore

done, they may be desirous of becoming wholly independent of the Union and therefore may either omit to form any Regulations or Laws, concerning the Time place & manner of electing federal Rep. or they may fix on improper places, inconvenient Times, & a manner of Electing wholly disagreeable to the people. Should either of these cases take place, and no power be vested in Congress to revise their Laws or to provide other Regulations, the Union might be dismembered and dissolved, without a constitutional power to prevent it But this revisionary power being vested in Congress, the States will make wise & prudent regulations on the Subject of Elections, they will do all that is necessary to keep up a Representation of the People; because they know that in case of omission the Congress will make the necessary provision for this Object—(R Island required by Cong. /& refused/ to send Delegates)

“Some of the powers of the Legis. are ambiguous & others indefinite & dangerous”—this clause contains an imputation so very general that no reply in detail can be attempted without commenting on every sentence wh.

forms the Grant of powers to Congress—Most of the sentences are transcribed from the present confederation, and we can only observe that it was the intention and honest desire of the Convention to use those expressions that were most easy to be understood and lest equivocal in their meaning; and we flatter ourselves they have not been intirely disappointed—we believe that the powers are closely defined, the expressions as free from ambiguity as the convention could form them, and we never could have assented to the Report had We supposed the Danger Mr. G. predicts. . . .

When the constitution vests in the Legislature “full power & authority to make and ordain all manner of wholesome & reasonable Orders, laws Statutes, ordinances, directions & instructions” as is the case with the Consn. of this State (Cap. 1, Ar. 1. Sect. 4.), a Declaration or Bill of Rights seems proper, But when the powers vested are explicitly defined both as to quantity & the manner of their Exercise a Dec[larati]on or Bill of Rights is certainly unnecessary & improper. ■

DISCUSSION QUESTIONS FOR A SOCRATIC SEMINAR

- What are the advantages and disadvantages of delegates to the Philadelphia Convention offering to address state legislatures or conventions as they deliberate over the Constitution?
- Would you agree or disagree with James Madison’s view that delegates to the Philadelphia Convention should not serve in the state conventions?
- In what ways do you find King and Gorham’s technical/factual line of reasoning to be effective? Overall, would you consider their approach to be ineffective?
- Should Gerry have included more specific details relating to his objections?
- In Gerry’s letter he raises concerns about the results of the Philadelphia Convention. King and Gorham do not mention or rebut this issue. Do you think King and Gorham should have addressed this subject?
- What does the extended treatment of the control/oversight of federal elections suggest about the nature of politics during this period of American history?



TEACHING TOOLS

I. Gerry's Suspicious Mind, Part I: Reflecting on Gerry's Claims about Congressional Powers

1. For this lesson, all students should have access to Article I, Section 8, of the Constitution as they evaluate Gerry's claim that "some of the powers of the Legislature are ambiguous, and others indefinite and dangerous."
2. Divide the class into three groups. Each group should read Article I, Section 8 of the Constitution. The first group should look for powers that it deems to be ambiguous (vague or unclear). The second group should look for powers that it thinks are indefinite (unlimited). And the third group should look for powers that it considers to be dangerous. You may want to have students use the chart below.

Ambiguous Powers	Indefinite Powers	Dangerous Powers

3. After the three groups have had sufficient time to complete their assignments, have them report their findings to the class.
4. If time allows, lead a discussion using the following questions:
 - a. In your opinion, are ambiguous powers more dangerous than indefinite powers?
 - b. Would you consider an ambiguous power to be both indefinite and dangerous? If so, cite some examples?
 - c. In your opinion, should Gerry have been more detailed in regards to specific powers enumerated in Article I, Section 8?

- To conclude the lesson, have each student select one of the ambiguous or indefinite powers and revise it to clarify or limit the power. Have the students share their revisions with the class.

II. Gerry’s Suspicious Mind, Part II: Thinking about Congress and Federal Elections

- In this lesson, students will evaluate Gerry’s claim that Congress can potentially control or eliminate state authority over elections of U.S. representatives and senators. You should have students briefly look at Article I, Section 4, clause 1, which states:

“The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of chusing Senators.”

Remind students that Gerry is addressing this part of the proposed Constitution when he writes in his letter that the people will:

“have no security for the right of election”

- Divide the class into groups of 3-5 students. Students should have access to the chart below, which will help to organize their thoughts about five arguments in King and Gorham’s rebuttal to Gerry.

King/Gorham’s Arguments

Effectiveness of the Argument

“Town after Town from disaffection or other motives might refuse to elect Representatives”

“Counties & larger districts might combine against sending members to the General Court, and in this silent manner the Govt might be wholly destroyed”

“that Congress may fix improper places, inconvenient Times, and a manner of electing . . . it is not a very probable supposition”

“it is thirteen Times more probable that some one of the States may make these inconvenient Regulations”

“this revisionary power being vested in Congress, the States will make wise & prudent regulations on the Subject of Elections, they will do all that is necessary to keep up a Representation of the People”

3. After the groups have had a chance to discuss the effectiveness of King and Gorham’s arguments, have them share their assessments with the class.
4. After the groups have shared their thoughts, if time allows, lead a discussion using the following questions:
 - a. Would you suggest that some of King and Gorham’s arguments are better than others? If so, which one is the best?
 - b. To what extent is representation the central issue in these portions of the documents? Why might representation be such an important concept at this time?
 - c. To what extent do King and Gorham’s arguments center on power (i.e., federalism)? (Note: Students should see that King and Gorham’s rebuttals suggest that the state governments are more of a problem than the national government.)

III. Rebutting Gerry’s Suspicious Mind: Thinking about King and Gorham’s Response to Gerry on the Ratio of Representation in the House

Note to Teachers: The size of the House of Representatives became a highly controversial issue during the ratification debates. Article I, Section 2, clause 3 of the Constitution provides that “The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at least one Representative.” Federalists often implied that this ratio was fixed at one per 30,000, while Antifederalists argued that the states were guaranteed only one representative each. The words “not exceed” meant that no matter how large a state’s population the minimum of one representative satisfied the constitutional requirement. To illustrate their position, Antifederalists alluded to the allotment of representatives for the first House of Representatives as specified in Article I, Section 2, clause 3 of the Constitution in which sixty-five representatives were parceled out among the thirteen states, with Virginia receiving ten, Massachusetts eight, Delaware one, etc. Antifederalists compared the small U.S. House of Representatives to the state assemblies in which Rhode Island had 70 members; Virginia, 150; Massachusetts, over 400; while the British House of Commons had 540 members. Federalists liked the idea of a small House of Representatives because it meant that the states would elect their representatives either in large election districts or in statewide elections, which would probably mean that only the most prominent (i.e., the natural aristocracy) would be elected. According to such logic, Antifederalists claimed, the House would be further separated from the direct influence of the people. (An excellent example of this Antifederalist argument is George Mason’s 4 June 1788 speech in the Virginia Convention.) In this lesson, students will evaluate Gerry’s claim that representation in Congress is defective. In Gerry’s letter he stated “that there is no adequate provision for a representation of the people.” King and Gorham address this statement at length. Article I, Section 2, clause 3 serves as the backdrop for this issue. Remind students that it is this part of the proposed Constitution that Gerry is addressing.

1. All students should have access to Article I, Section 2, clause 3 of the Constitution. It states:

“The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at least one Representative; and until such enumeration shall be made, the State of New Hampshire shall be entitled to chuse three, Massachusetts eight, Rhode-Island and Providence Plantations one, Connecticut five, New-York six, New Jersey four, Pennsylvania eight, Delaware one, Maryland six, Virginia ten, North Carolina five, South Carolina five, and Georgia three.”
2. Divide the class into groups of 3-5 students. Students should have access to the chart below, which will help to organize their thoughts about King and Gorham’s rebuttals to Gerry’s concern “that there is no adequate provision for a representation of the people.”

King/Gorham's Rebuttals	Summary	Why is this good representation?
<p>“the Congress must cause the Numbers of Inhab. to be taken within 3 yrs, and may do it within one”</p> <p>“the people of america double in 25 yrs, then in 25 yrs. the Number of Reps may be 200, in 50 years 400, in 75 years 800”</p>		

3. After groups have had sufficient time to discuss King and Gorham's rebuttals, have the groups report their findings to the class.
4. If time allows, lead a discussion using the following questions:
 - a. Why might King and Gorham extend the argument to fifty, seventy-five, and one hundred years?
 - b. What is it about the increasing numbers in their argument that would help to calm the fears of Antifederalists?
 - c. Why might King and Gorham exclude the phrase “shall not exceed” in their rebuttals to Gerry's objections over adequate representation?
5. You can conclude the lesson by having the groups consider the following questions:
 - a. What ratio would they consider to be best?
 - b. Would they consider the current ratio of 1:700,000 to be a problem?
 - c. Would we be better off increasing or decreasing the size of the House of Representatives?

VOCABULARY

Gerry's Objections

1. *quorum*: a minimum number of an assembly required to conduct business
2. *exigencies*: a need or demand
3. *acquiesced*: to accept without protest
4. *dissolution*: disintegration
5. *precipitate*: hasty
6. *implicit*: definite; constant

King and Gorham's Response

1. *destitute*: lacking in
2. *candid*: sincere or frank
3. *ascertained*: determined

4. *subvert*: undermine
5. *disaffection*: dissatisfaction; discontent
6. *propriety*: wisdom or correctness
7. *vesting*: to place power in or bestow power upon
8. *supposition*: suggestion, proposition
9. *dismemberment*: cutting off; breaking apart
10. *ambiguous*: vague; indefinite
11. *imputation*: allegation; attribution
12. *transcribed*: taken from
13. *equivocal*: unclear; open to interpretation