

Robert Whitehill in the Pennsylvania Ratification Convention, 30 November 1787

ROBERT WHITEHILL: I confess, Mr. President, that after the full exercise of his eloquence and ingenuity, the honorable delegate to the late Convention [James Wilson] has not removed those objections which I formerly submitted to your consideration in hopes of striking, indeed, from his superior talents and information a ray of wisdom to illuminate the darkness of our doubts and to guide us in the pursuit of political truth and happiness. If the learned gentleman, however, with all his opportunities of investigating this particular system, and with all his general knowledge in the science of government, has not been able to convert or convince us; far be it from me to impute this failure to the defects of his elocution or the languor of his disposition. It is no impeachment of those abilities which have been eminently distinguished in the abstruse disquisitions of law that they should fail in the insidious task of supporting, on popular principles, a government which originates in mystery and must terminate in despotism. Neither can the want of success, sir, be ascribed to the want of zeal; for, we have heard with our ears, and our eyes have seen, the indefatigable industry of the worthy member in advocating the cause which he has undertaken. But, Mr. President, the defect is in the system itself, there lies the evil which no argument can palliate, no sophistry can disguise. Permit me, therefore, sir, again to call your attention to the principles which it contains, and for a moment to examine the ground upon which those principles are defended. I have said, and with increasing confidence I repeat, that the proposed Constitution must eventually annihilate the independent sovereignty of the several states. In answer to this, the forms of election for supplying the offices of the federal head have been recapitulated; it has been thence inferred that the connection between the individual and the general governments is of so indissoluble a nature, that they must necessarily stand or fall together, and, therefore, it has been finally declared to be impossible, that the framers of this Constitution could have a premeditated design to sow in the body of their work, the seeds of its own destruction. But, sir, I think it may be clearly proved that this system contains the seeds of self-preservation, independent of all the forms referred to; seeds which will vegetate and strengthen in proportion to the decay of state authority, and which will ultimately spring up and overshadow the thirteen commonwealths of America with a deadly shade. The honorable member from the city [James Wilson] has indeed observed that every government should possess the means of its own preservation; and this Constitution is possibly the result of that proposition. For, sir, the first Article comprises the grants of powers so superlative in their nature, and so unlimited in their extent, that without the aid of any other branch of the system, a foundation rests upon this Article alone for the extension of the federal jurisdiction to the most extravagant degree of arbitrary sway. It will avail little to detect and deplore the encroachments of a government clothed in the plenitude of these powers; it will afford no consolation to reflect that we are not enslaved by the positive dereliction of our rights; but it will be well to remember, at this day, sir, that, in effect, we rob the people of their liberties when we establish a power whose usurpations they will not be able to counteract or resist. It is not alone, however, the operative force of the powers expressly given to Congress that will accomplish their independence of the

states, but we find an efficient auxiliary in the clause that authorizes that body “to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution in this government of the United States, or in any department or office thereof” [Article I, section 8]. Hence, sir, if it should happen, as the honorable members from the city [Thomas McKean and James Wilson] have presumed, that by the neglect or delinquency of the states, no place and manner, or an improper place and manner for conducting the elections should be appointed, will it not be said that the general government ought not for this reason to be destroyed; and will it not therefore be necessary for carrying the powers of this Constitution into execution, that the Congress should provide for its elections in such manner as will prevent the federal business from being frustrated by the listless or refractory disposition of the states individually? This event is in a great measure provided for, indeed, by the plan itself; for, “the Congress may (constitutionally) at any time by law make or alter such regulations (that is the times, places, and manner of holding elections prescribed in each state by the legislatures thereof) except as to the places of choosing senators” [Article I, section 4]. If the power here given was necessary to the preservation of the proposed government, as the honorable members have contended, does it not, at the same time, furnish the means to act independent of the connection, which has been so often represented, as the great security for the continuance of the state sovereignties? Under the sanction of this clause, the Senators may hold their seats as long as they live, and there is no authority to dispossess them. The duration of the House of Representatives may likewise be protracted to any period, since the time and place of election will always be adapted to the objects of the Congress or its leading demagogues; and as that body will ultimately declare what shall constitute the qualification of its members, all the boasted advantages of representation must terminate in idle form and expensive parade. If the voice of complaint should not then be silenced by the dread of punishment, easy it is nevertheless to anticipate the fate of petitions or remonstrances presented by the trembling hand of the oppressed to the irritated and ambitious oppressor. Solicitation will be answered by those statutes which are to be the supreme law of the land, and reproach will be overcome by the frown of insolent authority. This, Mr. President, is but a slight view of the calamities that will be produced by the exercise of those powers which the honorable members from the city have endeavored to persuade us it is necessary to grant to the new government, in order to secure its own preservation and to accomplish the objects of the Union. But in considering, sir, what was necessary to the safety and energy of the government, some attention ought surely to have been paid to the safety and freedom of the people. No satisfactory reason has yet been offered for the omission of a bill of rights; but, on the contrary, the honorable members are defeated in the only pretext which they have been able to assign, that every thing which is not given is excepted, for we have shown that there are two articles expressly reserved, the writ of habeas corpus and the trial by jury in criminal cases; and we have called upon them, in vain, to reconcile this reservation with the tenor of their favorite proposition. For, if there was danger in the attempt to enumerate the liberties of the people, lest it should prove imperfect and defective, how happens it, that in the instances I have mentioned, that danger has been incurred? Have the people no other rights worth their attention, or is it to be inferred, agreeably to the maxim of our opponents, that every other right is abandoned? Surely, sir, our language was competent to declare the sentiments of the people and to establish a bar against

the intrusions of the general government in other respects as well as these; and when we find some privileges stipulated, the argument of danger is effectually destroyed; and the argument of difficulty, which has been drawn from the attempt to enumerate every right, cannot now be urged against the enumeration of more rights than this instrument contains. In short, Mr. President, it is our duty to take care that the foundation of this system is so laid that the superstructure, which is to be reared by other hands, may not cast a gloom upon the temple of freedom, the recent purchase of our toil and treasure. When, therefore, I consider it as the means of annihilating the constitutions of the several states, and consequently, the liberties of the people, I should be wanting to my constituents, to myself, and to posterity did I not exert every talent with which Heaven has endowed me to counteract the measures that have been taken for its adoption. That it was the design of the late Federal Convention to absorb and abolish the individual sovereignty of the states, I seek no other evidence but this system; for as the honorable delegate [James Wilson] to that body has recommended, I am also satisfied to judge of the tree by its fruit. When, therefore, I behold it thus systematically constructed for the accomplishment of that object, when I recollect the talents of those who framed it, I cannot hesitate to impute to them an intention corresponding with the principles and operation of their own work. Finally, sir, that the dissolution of our state constitutions will produce the ruin of civil liberty is a proposition easy to be maintained, and which, I am persuaded, in the course of these debates, will be incontrovertibly established in the mind of every member, whose judgment is open to conviction and whose vote has not been conclusively pledged for the ratification of this Constitution before its merits were discussed. [Dallas' Debates, Pennsylvania Herald, 29 December]

Whitehill: The general government may subsist after the abolition of the state governments. The powers of Congress are unlimited and undefined. The Senators may hold their places as long as they live, and there is no power to prevent them.

Article 1, section 8, last clause gives the power of self-preservation independent of the several states; for in case of their abolition it will be alleged in favor of the general government that self-preservation is the first law.

The "Time" of election is in their power and therefore they may make it as long as they please.

There are some reservations in this government—why not more?

It was systematically intended to abolish the state governments. [Wilson's Notes, PHi]

Whitehill: That after the state governments is destroyed [etc.]. When vacancies happen, etc. the executive, etc. They have the time, manner, and place (1st Article, section 4th). They have also the power of saying what the qualification of

the electors [is]—£10,000. Why destroy the foundation of the state governments? [Wayne's Notes, MiU-C]

Whitehill: The seeds of self-preservation are so well sown in the federal system, that the same will overshadow all the state governments. [Yeates's Notes, PPIIn]

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