

Sidney, *New York Journal*, 4 December 1788

To the Members of the Legislature of the STATE of NEW-YORK.

The arguments heretofore urged in favor of the new constitution have been progressive. Its advocates, at first, asserted it to be an excellent and a complete form of government, amply sufficient to secure the rights and liberties of the people; that a bill of rights was unnecessary; that the rulers ought to have the power to keep a standing army, build a navy, command the militia, and order them when and where they pleased, and to raise a revenue by direct taxes, poll taxes, and such excises as they might think proper: in a word, it was represented to be perfect, and that it was not in the power of human wisdom to devise a better.

Then again they admitted, that the constitution was imperfect, and that amendments were absolutely necessary, but strenuously advocated an adoption in its present form; trusting to subsequent amendments, because it could not be supposed that all the states would agree upon the same set of amendments.

It seems, however, to be now the general and prevailing opinion, that the amendments agreed to by the convention of this state, will be necessary and extensively beneficial.

I shall enquire no farther into the motives which induced the convention to ratify this very imperfect constitution without a previous stipulation for all the amendments, than that it is said, on the one hand, that they were seduced and deceived by fears of convulsion, anarchy, and confusion, and that Congress would remove from the state in case of its non-adoption; and, on the other, that they adopted it from an invincible reluctance to a separation from our sister states. It is sufficient to know, that it has been adopted in full confidence that amendments should take place, and that there were gentlemen strenuously for and against the measure; which of them were right and which wrong, time and experience will determine. Should the amendments be obtained without much opposition, trouble, and difficulty, it may be said, that those who were for the present adoption of it, have done well; but if, on the contrary, the amendments are opposed, and the means of obtaining them should throw the state into convulsions, I suppose it will not only be said, that they have done ill, but that they have acted against the experience of all ages.

By this adoption, we are placed in a most dangerous situation; and unless we proceed with the utmost caution and circumspection, and use all the means in our power to obtain the proposed amendments, we may be frustrated in our hopes and expectations; and the consequence will be, that we and our posterity must submit to the constitution in its present defective form; the greatest curse that ever befel a free people, since the fall of Adam. Our continental rulers will no doubt be prudent and cautious enough for a time and not exert all the powers delegated to them—and thus afford a temporary ease and relief to the minds and purses of the people: but although it may not effect an immediate slavery, yet it will hang like a mill-stone about us, until at last it must unavoidably settle us into hewers of wood and drawers of water. Before its adoption, it was in our power to prevent, and we could have prevented, its operation, until its radical and dangerous defects were amended; whereas it now requires two thirds of the states to call a convention, the like number to agree to the amendments, and three fourths of the legislatures to ratify them.

From this train the difficulty of effecting any material amendments may be easily observed. It lately took Congress ten weeks, before seven states could be prevailed on, to agree upon the place, where the new government was to meet.³ And this is not all, for (unless prevented) it becomes the duty “of the members of the several legislatures, and all the executive and judicial officers, both of the United States and of the several states, to be bound by oath or affirmation to support this constitution.” Observe the constitution in its present form!

In this dangerous situation, where our all is at stake, I beg leave to suggest the propriety of passing an act as soon as possible, to inhibit your federal officers from taking that oath, until agreeable to our amendments. “The senators, and representatives and all the executive and judicial officers of the United States, shall be bound by oath or affirmation, not to infringe or violate the constitutions or the rights of the respective states.” And the state officers, until the amendments have been previously agreed to, and confirmed by three fourths of the several legislatures.

Also to convert the following instruction into an oath of office. “And your representatives do swear, that they will exert all their influence and use all reasonable means to obtain a ratification of all the amendments; and in all laws to be passed by the Congress, in the mean time, to conform to the spirit of the said amendments.”

This will undoubtedly be opposed and especially out of doors; for some of the most zealous advocates for the new government do not wish or desire any amendments (unless it should be to make it still stronger) and will exert every faculty of mind and body to oppose them; as if it was not enough, that we have transferred “the power of determining whether that government shall be rendered perpetual in its present form, or altered agreeable to our wishes on a minority of the states with whom we unite.”⁴ They will wish to see the public officers embarrassed under this oath, and become even involuntary abettors in frustrating the accomplishment of the amendments; or at least secure their silence when their constituents shall be reduced to the dire necessity of calling out, stand fast in your liberty, be not again entangled with the yoke of bondage.

Suppose Congress should interfere in your elections, attempt to violate the trial by jury, call out the militia, lay poll taxes and excises, or exercise other powers, contrary to the letter and spirit of your amendments, with what face could your legislative, executive or judicial officers (having taken that oath) oppose such proceedings? A conscientious man can have no idea of a mental evasion or a secret reservation, when under an oath; for though he sweareth to his own hurt he changeth not: will it afford any consolation to you, or to your constituents, or give relief, when thus oppressed, that the convention adopted in full confidence of future amendments.

What arguments may be used, or what measures will be taken by those who are opposed to the amendments in this state, in order to frustrate the measure, is difficult to predict. Their coadjutors in Massachusetts, it seems, at first attempted to persuade the people that it would be best to postpone calling a convention and to let experience dictate the defects, and then the necessary amendments would be immediately adopted.

When they found the bait would not take they came out more openly. (Boston Gazette, 21st of October 1788.) He is now called “an enemy to his country, who would attempt amendments, and told, that the propositions for that purpose in the convention, were only conciliatory, and the constitution being adopted there can be no need of them.”

Perhaps those in this state will pursue their former delusive manœuvres, and inform you, that the more confidence you place in your rulers, the more good they will do; that Americans are an enlightened people—that they will make choice of good representatives, so that there will be no danger of procuring a convention, an agreement to the amendments, and three fourths of the states to confirm them; that the rulers will not dare, nor would a people so enlightened suffer them, to abuse their powers—Or perhaps (preposterous as it may appear, considering the conduct of our legislature, of Congress, and of the general convention in Philadelphia) they may say, that you have no right or power to make such a law, and that by the adoption you are obliged to implicit acquiescence, though it should be at the risk of all the rights and privileges of your constituents.

That the advocates for this new constitution have had the advantage in starting, is no new thing. I suppose it ever was, and always will be the case, that those who are for subverting the government (their movements being preconcerted) have at first the advantage of those who are for supporting it. They choose their epithets, or ketch-words—the confederation is a rope of sand—trade and credit abroad—the worse the better: of late they have covered themselves under the term federal, while they were undermining and annihilating the confederation. But that these circumstances should be adduced to prove that we are distanced, and not warranted to proceed, and that we ought cheerfully to submit, is so great a perversion of reason, and so entirely unwarranted by the real state of things, that common sense stands aghast at the idea.

You are the representatives, the guardians of the rights and liberties of the people, and invested with every power necessary for their preservation and happiness. The words of Vattel are, “A nation is under an obligation to preserve itself, and has (not only) a right to every thing necessary for its preservation, but to avoid every thing that might occasion its destruction; and, as the pact may be dissolved by common consent of the parties, if the individuals that compose the nation, unanimously consent to break the knot that binds them, they may be permitted to do it,^(c) and thus to destroy the state or nation; but they doubtless cannot innocently do it, if they take this step without just and weighty reasons—and, as it is impossible that the nation should ever permit the use of such means, if on a particular occasion no other present themselves for fulfilling a general obligation, the obligation ought to cease in that particular instance as impossible, and consequently void—By an evident consequence from what has been said, a nation ought carefully to avoid, as much as possible, whatever may cause its destruction, or that of the state, which is the same thing—A nation or state has a right to every thing that can secure it from such a threatening danger, and to keep at a distance whatever is capable of causing its ruin; and that from the very reasons that establish its right to the things necessary to its preservation.” Vattel, 12, 13.

By the laws of Moses, although a man might, if he pleased, become a slave, yet no one had a right to use delusive arguments to induce him to submit to a state of bondage; and that it might evidently appear that he had not been imposed upon, he was, after having expressed his inclination, taken by his master before the judges to be interrogated, and if he persisted before the judge, if the voice of reason did not influence him, the judge directed him to be put to the shameful and painful operation of having his ear nailed to the door post; and if he still persisted was then, and not till then, deemed a complete and voluntary slave.

That honorable body (of blessed memory) the Congress of 1776 appear to have been of the same opinion; “We hold these things (said they) to be self-evident, that all men are created

equal; that they are endowed by their creator with certain unalienable rights, that among these are life liberty and the pursuit of happiness." But supposing an individual had, in a fit of delusion, submitted to become a voluntary slave, would he not have a right, when his mind acquired its wonted tone, to extricate himself? He certainly would.

Is it not notorious that even some members of the convention at Poughkeepsie were intimidated and deluded by threats and promises? Was it not asserted in the convention, that they had no right to amend, that they could only approve or reject? Were they not threatened, that unless they adopted the constitution in its present form, the southern part of the state would secede from the northern and join with the adopting states to subdue it? That it would throw the state into convulsions, and a scene of blood and devastation would ensue? and besides, that Congress would remove from the state and, were they not induced to believe, that if they did adopt it in its present form, Congress would remain in the city of New York? Is it not notorious that these threats and promises influenced some of the members to agree to the adoption, who would otherwise have spurned at it? to use their own words, "several articles in it appear so exceptionable to a majority of us, that nothing but the fullest confidence of obtaining a revision of them by a general convention and an invincible reluctance to separating from our sister states, would have prevailed upon a sufficient number to ratify it without stipulating for previous amendments." Every man in his private capacity in such a case, might, in a court of justice, avail himself of the plea of duress, and avoid [i.e., void] the contract. Would it be just or expedient, that the legislative, executive, and judicial officers should be bound and fettered by an oath to support a constitution thus adopted, and which your convention declares to be so very exceptionable; and which, if not amended, will produce the most direful effects.

I apprehend the time is not far distant, when the propriety of these observations will be more fully evinced: even now there are but few who do not consider the bill and declaration of rights as incorporated with and making part of the adoption, although they are not so expressed: it seems state policy has not yet rendered it expedient.

Be that as it may, the present legislature are under no restraint, and therefore have only to consider whether the law proposed will have the effect intended, viz. to secure the amendments, and consequently the rights and liberties of the people.

November 29, 1788.

(a) "It was compared to the loaning a man's money untold and without proper security for the payment thereof, in order to ascertain his honor; or to neglect to repair a breach in the walls of a city, liable to be besieged, in order to discover whether the assailants would avail themselves of the advantage offered them; the loss of property, however, in the one case, and a lodgement gained behind the breach in the other, would render after precaution unavailable."

(b) "The dark councils of the Cabal, though from the first they gave anxiety to all men of reflection; were not thoroughly known but by the event," 7 Hume, 471. Absalom, under the cloak of serving the Lord, attempted to dethrone his father David.

(c) The notions of mankind are sometimes very unaccountable, and their desires equally absurd and importunate, "Nay, but we will have a King over us," was the cry in the days of Samuel; and John the divine foretels, that all the world

will worship the beast—saying, “who is like unto the beast! who is able to make war with him.”

1. This essay was written by Abraham Yates, Jr., who frequently wrote under the pseudonym “Sidney” or “Sydney.”

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