

**Shays's Rebellion, the Anti-Federalists,
and the Consolidating Constitution**

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The Federalist Papers, letters written by Alexander Hamilton, James Madison, and John Jay in support of the newly proposed Constitution, are well known and well read even over two hundred years after they were written.¹ Collectively, these letters are considered a milestone in American political science. While they present a systematic defense of the Constitution, this fundamental document did not yet include the Bill of Rights we are so familiar with today. It is the less well known and less well studied writings of the opponents of the Constitution, the so-called Anti-Federalists, that we have to thank for this much needed addition. The opponents of the Constitution were as diverse in their reasons for opposing it as were the supporters of the proposed new system. However, one can find common themes that run through many of the Anti-Federalists' writings. Among these is a distrust of the elites, the aristocratic class, who were promoting the new system of government and no doubt would assume a prominent role within it. The Anti-Federalists also feared, and rightly so, what they perceived as features of the new Constitution that would inevitably lead to a consolidation of power in the national government. The state governments would be abolished, or at the very least be so subordinated to the national government as to have been stripped of sovereignty. Such a government would be tyrannical. As it turns out, history has proven the Anti-Federalists right in many respects, wrong in others. Ultimately, they failed in preventing the ratification of the Constitution, though they were instrumental in forcing the Federalists to add the Bill of Rights. Why did they oppose the Constitution? And what did they find so objectionable about it? I will attempt to answer these questions in the remainder of this essay.

¹ *The Federalist Papers*, Clinton Rossiter, ed., with an introduction and notes by Charles R Kesler, (Penguin Putnam Inc., 1999).

But first, in order to gain perspective on the arguments of the Anti-Federalists and the Federalists, it would be fruitful to delve briefly into the background history that led to the framing of the Constitution in the first place. The United States were at the time a federal republic.² The word federal was used differently at the time, our current form of government not having been invented yet. A federal government, or confederation, consists of a very weak central government that serves certain delegated functions for, and whose powers are delegated by, a number of sovereign. In this sense, The Impartial Examiner was correct when he argued that the Anti-Federalists were the true Federalists.³ The term confederation is now used solely to identify this form of government, while federation or federalism has shifted in meaning to identify a form of government that is structurally similar to that of a confederation but with a significantly stronger central government that shares sovereignty with its component regions.

The United States were governed by the Articles of Confederation. The men who would become known as Federalists saw three principal deficiencies in the current form of government. It became apparent, in the wake of the Revolution, that Congress was unable to pay off the national debt that had been taken on in order to fight the war for independence; Congress was unable to raise revenue by taxation or force the states to pay up. It also did not have sufficient power to regulate relations between the states and foreign nations. Congress could not force the states to abide by treaties or prevent them from signing their own at cross-purposes with each other. Thus it was recognized by

² See the “Letters of Agrippa,” particularly VIII (December 25, 1787), in *The Anti-Federalist: Writings by the Opponents of the Constitution*, Herbert J. Storing, ed., selected from *The Complete Anti-Federalist* by Murray Dry (Chicago: University of Chicago Press, 1985).

³ *The Anti-Federalist*, p. 276; cf. *The Complete Anti-Federalist*, 5.14.25-26.

many that the Articles of Confederation had to be strengthened. But these were not sufficient reasons to jettison the old system of government entirely.

The third principal deficiency of the Articles of Confederation was the perceived weakness of the national and state governments in the face of civil unrest and insurgencies. The immediate catalyst of the Constitutional Convention of 1787 was an event in Massachusetts called Shays's Rebellion. This event was used by the ruling elites as an impetus for improving the system of government and, later, as a justification for the dire need of ratifying the new Constitution. Most importantly, it was this event, as it was reported to him by his friends, that stirred George Washington out of his retirement and convinced him to preside over the Constitutional Convention. His presence was pivotal, as it gave the convention and the controversial Constitution a special air of legitimacy, for though the "other delegates...were men of great prestige,...none as yet had been deemed demigods. Washington, in contrast, was already a towering figure, larger than life, the nation's most influential citizen. With Washington as presiding officer, everyone in the country had to take notice."⁴

Of the rebellion that occurred in Massachusetts in 1786-87, Washington was informed by his former aide, Daniel Humphreys, that the uprising was due to the "licentious spirit prevailing among the people"; that the malcontents were "levellers" determined to "annihilate all debts public & private."⁵ The rebels had shut down courts, allegedly to suspend debt suits, and had attempted to seize the national arsenal at Springfield to do...what? The arsenal would have made the rebels better armed than the

⁴ Leonard L. Richards, *Shays's Rebellion: The American Revolution's Final Battle* (Philadelphia: University of Pennsylvania Press, 2002), p. 133. The following discussion on Shays's Rebellion is drawn from this work.

⁵ Quoted in Richards, p. 2.

state of Massachusetts had they been successful.⁶ Reports from Humphreys, Henry Knox, and others instilled in Washington a fear that the political fabric of the nation was unraveling and that something drastic had to be done to save it.

This popular account of Shays's Rebellion is a highly distorted one, however. Far from being a mob of destitute farmers, Shays and his approximately 4,000 fellow rebels ranged from the heavily indebted and poor to the wealthy and well-to-do. Moreover, there is absolutely no correlation between debt and the backcountry towns of Massachusetts that rebelled. A large number of the rebels were veterans of the Revolutionary War, including Daniel Shays. The rebellion had popular support in western Massachusetts. Even those who did not actively take up arms were sympathetic to the rebel cause. Indeed, nearly all of the citizen militia either refused to suppress the rebellion or joined forces with the rebels. And the authorities in Boston were well aware of this.

If it was not to suspend debt suits and eradicate "all debt, public and private," why did the farmers of the Massachusetts backcountry rebel? In their eyes, they were fighting an unjust government. They were the victims of a regressive tax system, an overly expensive and complicated judicial system, and were not adequately represented in the Massachusetts government, which was dominated by the Boston gentry and unresponsive to their needs. In short, their rebellion was in the spirit of the Revolution; they saw themselves as "Regulators...for the Suppressing of tyrannical government in the Massachusetts State,"⁷ a state that was no better than the British colonial rule they had so recently fought to throw off.

⁶ Ibid.

⁷ Ibid., p. 63.

Shays's Rebellion was sparked by a sharp rise in regressive taxes. The taxes themselves were increased as part of the plan to pay off the state debt in less than ten years, and enrich the few at the expense of the many in the process. During and after the Revolutionary War, the states had issued notes to the soldiers as payment for their services. Few of them could afford to wait until their state was able to pay off its debts, particularly in the face of depreciating paper money, so they often sold them at a fraction of their value to speculators in order to receive payment that was more immediately useful for paying expenses. Large portions of these notes ended up in the hands of a relative few, many of whom had political connections. The mercantile-dominated legislature managed to get the state debt consolidated at twice the value necessary and intended to have it paid off quickly. Thus, taxes were raised to an oppressive level. Especially hard hit were the backcountry farmers, particularly those with grown sons. To make matters worse, payment had to be made in hard money.

The Massachusetts elite were able to put a negative spin on Shays's Rebellion. Their version of the event not only served as the catalyst for the Constitutional Convention and got Washington out of retirement, but intensified the distrust felt among the elite about the ability of the common people to govern themselves. "The general conviction was that ordinary people, especially in Rhode Island and Massachusetts, were out of control and that there were "combustibles," as Washington term them, in every state."⁸ Madison proclaimed, "The insurrections in Massachusetts admonished all the States of the danger to which they were exposed."⁹ Even Elbridge Gerry, who would later oppose the Constitution, declared, "The evils we experience flow from the excess of

⁸ Ibid., p. 134.

⁹ Ibid.

democracy.”¹⁰ Indeed, the new Constitution was decidedly aristocratic, especially the Senate – elected indirectly by the people through their state legislatures and designed with strong powers to counter the more popularly elected House of Representatives – and the President, who would be elected indirectly by the people through the Electoral College. Also, property requirements were included not only for suffrage but for eligibility for public office.

Though not recognizing the justness of Shays’s Rebellion, The Federal Farmer nevertheless percipiently identifies the aristocratic elite pushing for the adoption of the Constitution.

Though I have long apprehended that fraudulent debtors, and embarrassed men, on the one hand, and men, on the other, unfriendly to republican equality, would produce an uneasiness among the people, and prepare the way, not for cool and deliberate reforms in the governments, but for changes calculated to promote the interests of particular orders of men.¹¹

The latter party, in reaction to the former (Shays & Co.), “in 1787, has taken the political field, and with its fashionable dependents, and the tongue and the pen, is endeavoring to establish in great haste, a politer kind of government.”¹² Though he does not necessarily identify the Convention delegates as all being part of this group, he nevertheless holds that this group of “aristocrats support and hasten the adoption of the proposed constitution, merely because they think it is a stepping stone to their favorite object.”¹³

Though the tactics used in other states were not as underhanded, it will be instructive to have a look at the ratification process in the first state to take action on the Constitution: Pennsylvania. Samuel Bannister Harding informs us:

¹⁰ Ibid.

¹¹ *The Anti-Federalist*, p. 33.

¹² Ibid., p. 62.

¹³ Ibid.

In the State were two parties, embittered by a dozen years of violent struggle. On the one side, and for the moment in power, stood the greater proportion of the men of property, of education, of large ideas, and federal views; six of the eight delegates sent by the State to the Federal convention had come from their number, and the other two – Franklin and Ingersoll – if not neutral, were at most but moderate Constitutionals. On the other side [the Constitutionals] the leadership had been assumed by men of obscure birth, of little education or property, and of the narrowest views. Small wonder, then, that the cause espoused by the first met with the violent condemnation of the second, and that the contest which ensued was unprecedented in virulence and animosity.¹⁴

The Republican-controlled legislature moved quickly to call a ratifying convention before the opposition could get organized or obtain thorough information. Sixteen of the Anti-Federalist legislators attempted to prevent a quorum by fleeing the assembly. Two were rounded up and forcibly detained, so that a quorum was established; a vote was eventually taken and the Constitution was ratified. Though each article was debated, the dissenting opinion of the minority was kept out of the official record and no amendments were allowed to be proposed. Moreover, the delegates that made up the quorum, sixty-nine delegates, represented a mere ten percent of eligible voters. Less than a week later, an open letter was published by a person or group claiming to be the Pennsylvania Minority.¹⁵

After criticizing the lack of a Bill of Rights in the Constitution, a sticking point for the Anti-Federalists, and recommending fourteen, the Pennsylvania Minority goes on to raise three general objections. The first raises the point that, “the most celebrated writers on government, and...uniform experience, [tell us] that a very extensive territory cannot be governed on the principles of freedom, otherwise than by a confederation of republics, possessing all the powers of internal government; but united in the

¹⁴ Ibid., p. 199.

¹⁵ Ibid., p. 204-206; cf. Richards, p. 141.

management of their general, and foreign concerns.”¹⁶ The only other way to govern such a vast territory is through despotism. This position echoes that of the Federal Farmer, who elaborated further “that one government and general legislation alone, never can extend equal benefits to all parts of the United States: Different laws, customs, and opinions exist in the different states, which by a uniform system of laws would be unreasonably invaded.”¹⁷ Well aware of how large a territory the United States were and how fast they were expanding, he notes:

the laws of a free government rest on the confidence of the people, and operate gently – and never can extend their influence very far – if they are executed on free principles, about the centre, where the benefits of the government induce people to support it voluntarily; yet they must be executed on the principles of fear and force in the extremes – This has been the case of every extensive republic of which we have any accurate account.¹⁸

Agrippa, too, argues that no extensive empire can or has been “governed upon republican principles, and that such a government will degenerate to a despotism, unless it be made up of a confederacy of smaller states, each having the full powers of internal regulation.”¹⁹

The Anti-Federalists feared that the Constitution, at least partly due to the large territory of the United States but also on its own merits (or demerits), would lead to a consolidated government and the abolition of the states, in fact if not in name. Brutus acknowledges that “although the government reported by the convention does not go to a perfect and entire consolidation, yet it approaches so near to it, that it must, if executed,

¹⁶ Ibid., p. 209.

¹⁷ Ibid., p. 39.

¹⁸ Ibid., p. 40.

¹⁹ Ibid., p. 235; cf. Pennsylvania Minority, p. 213.

certainly and infallibly terminate in it.”²⁰ The Federal Farmer,²¹ Pennsylvania Minority, and Agrippa agree. Brutus goes further, arguing that such is the very object of the Constitution itself. The preamble of the Constitution established the United States as “a union of the people...considered as one body” and does not secure the existence of the state governments.²² Its stated purpose is “To form a more perfect union” but a more perfect union of this kind would necessitate the abolition of “all inferior governments, and to give the general one compleat legislative, executive and judicial powers to every purpose.”²³ So too with its professed purposes of establishing justice and ensuring domestic tranquillity. The Pennsylvania Minority echo this argument, pointing out that “We the people of the United States” is “the style of a compact between individuals entering into a state of society, and not that of a confederation of states.”²⁴

The Pennsylvania Minority conclude that “consolidation pervades the whole constitution”²⁵ and Brutus agrees that the declared intention of the preamble “proceeds in the different parts”²⁶ of the Constitution. A very important issue to the Anti-Federalists, relating to the size and diversity of the United States, were “full and equal representation of the people in the legislature, and the jury trial of the vicinage in the administration of justice.”²⁷ The Federal Farmer defines full and equal representation as

that which possesses the same interests, feelings, opinions, and views the people themselves would were they all assembled – a fair representation, therefore, should be so regulated, that every order of men in the community, according to the common course of elections, can have a share in it – in order to allow professional men, merchants, traders,

²⁰ Ibid., p. 110.

²¹ Ibid., p. 37.

²² Ibid., p. 170.

²³ Ibid.

²⁴ Ibid., p. 213.

²⁵ Ibid.

²⁶ Ibid., p. 170.

²⁷ Ibid., p. 39.

farmers, mechanics, etc. to bring a just proportion of their best informed men respectively into the legislature, the representation must be considerably numerous.²⁸

The number of legislators allotted to the House of Representatives and the Senate was far too few to effect full and equal representation. In an era without the automobile or the train, this deficiency was aggravated by the extensive territory of the United States; “it would be impossible to collect a representation of the parts of the country five, six, and seven hundred miles from the seat of government”²⁹; only the wealthy would be able to afford being elected. But, as I have previously noted, full and equal representation is precisely what the framers of the Constitution did *not* want. A jury trial of the vicinage, or vicinity, meant a jury trial of your peers from the nearby area in which you lived. The Anti-Federalists were afraid that this vital tradition would be obviated by the single supreme judiciary under the new Constitution, even with its inferior courts.³⁰

Brutus argues that the general welfare clause in Section 8 of Article 1 grants Congress the authority to do anything “which in their judgment will tend to provide for the general welfare, and this amounts to the same thing as general and unlimited powers of legislation in all cases.”³¹ The Federal Farmer agrees that the powers lodged in the general government under the new Constitution are “very extensive powers – *powers* nearly, if not altogether, complete and unlimited, over the purse and the sword.”³² Brutus fears, however, that:

In a republic of such vast extent as the United States, the legislature cannot attend to the various concerns and wants of its different parts. It cannot be sufficiently numerous to be acquainted with the local condition and wants

²⁸ Ibid.

²⁹ Ibid.

³⁰ See “Letter of The Federal Farmer,” p 40.

³¹ Ibid., p. 170.

³² Ibid., p. 41.

of the different districts, and if it could, it is impossible it should have sufficient time to attend to and provide for all the variety of cases of this nature, that would be continually arising.

In so extensive a republic, the great officers of government would soon become above the controul of the people, and abuse their power to the purpose of aggrandizing themselves, and oppressing them. The trust committed to the executive offices, in a country of the extent of the United States, must be various and of magnitude. The command of all the troops and navy of the republic, the appointment of officers, the power of pardoning offences, the collecting of all the public revenues, and the power of expending them, with a number of other powers, must be lodged and exercised in every state, in the hands of a few. When these are attended with great honor and emolument, as they will be in large states, so as greatly to interest men to pursue them, and to be proper objects for ambitious and designing men, such men will be ever restless in their pursuit after them. They will use the power, when they have acquired it, to the purposes of gratifying their own interest and ambition, and it is scarcely possible, in a very large republic, to call them to account for their misconduct, or to prevent their abuse of power.³³

Something like this has indeed come to pass in the United States and, although the potential power of the executive branch was one to be feared, the Anti-Federalists were far more concerned at the moment with the consolidating powers of the legislative and judicial branches.

Among the powers of Congress that most disturbed the Anti-Federalists were its powers of internal taxation, its expansive power to maintain a standing army and regulate militias, its powers to regulate commerce and trade, and its treaty-making power. All of these would tend toward a consolidation of power in the national government. Internal taxation was disliked by the American people in general and the first two together, internal taxation and the power over the military, left room for an alarming degree of discretionary power. The two year limit on appropriations would hardly prevent Congress from simply renewing them every two years. In light of the discussion on Shays's

³³ Ibid., p. 116.

Rebellion, it is interesting to point out that the Constitution gave the national government the power not merely to repel invasions but also to suppress insurrections. Such a provision could be used to prevent secession or rebellion, by states or within states, be it just or unjust. Standing armies were widely recognized by Federalists and Anti-Federalists alike as a bane to free republics; they are a tool of repression and a vehicle for conformity and uniformity, of social engineering. Anti-federalists were also afraid that the concurrent powers of taxation, held by both the national and state governments, would eventually lead to the national government crowding the state governments out and depriving them of revenue. With power over commerce and trade and over the making of treaties, and with the laws and treaties passed and ratified by Congress as the supreme law of the land, there was also the danger that the national government could by way of these whittle away at the sovereignty of the several states. These fears too have to a great extent been realized, albeit largely a century after the Constitution was ratified.

The judiciary was also seen as a major feature of the Constitution that would tend to abolish the state governments or at least greatly emasculate them. Brutus complains that the power of judging the constitutionality of the laws is best left up to the people, who can decide to whether or not to re-elect legislators. Instead, in the Constitution, the unelected Supreme Court is given the sole authority of judging the constitutionality of the laws, and neither the “people, nor state legislatures, nor the general legislature can remove [the Supreme Court Justices] or reverse their decrees.”³⁴ He also was concerned that the national judiciary would contribute to the “entire subversion of the legislative, executive and judicial powers of the individual states.”³⁵ This would be accomplished

³⁴ Ibid., pp. 186-187..

³⁵ Ibid., p. 165.

through its original jurisdiction in cases between states and between states and citizens of other states, and through its appellate jurisdiction and its power to judge the constitutionality of state laws. As a final indignity in the eyes of the Anti-Federalists, the nail in the coffin so to speak, Article Six of the Constitution stipulates: “The senators and representatives before-mentioned, and the members of the several state legislatures, and all executive and judicial officers, both of the United States, and of the several states, shall be bound, by oath or affirmation, to support this constitution.” Brutus exclaims: “It is therefore not only necessarily implied thereby, but positively expressed, that the different state constitutions are repealed and entirely done away, so far as they are inconsistent with this, with the laws which shall be made in pursuance thereof, or with treaties made, or which shall be made, under the authority of the United States[.]”³⁶

Over two centuries after the ratification of the Constitution, many of the fears of the Anti-Federalists have been realized, though not necessarily in the way that they or even the Federalists would have expected. It is also true that most of these transformations took place over a century after they wrote. It is my opinion that the Bill of Rights and the tradition of republicanism and liberty prevailing among the people helped to slow this process down. Ultimately, the greatest instances of consolidation into the hands of the national government (and the executive in particular) has occurred during times of crisis, such as the Civil War, the Great Depression, and World Wars I & II.³⁷ The seeds were sown in the Constitution, however. And the road was embarked upon right in the beginning. Alexander Hamilton sought, as Secretary of the Treasury, and succeeded in, tying the interests of wealthy and well-born to the national government by

³⁶ Ibid., p. 121.

consolidating the debts of all the states into the hands of the national government and paying off the notes at face value, thus enriching the wealthy speculators such as those in Massachusetts. He rightly recognized that the wealthy were a threat to any government that got in their way, but with political connections and the expansive power of the new government at their disposal they would also prove to be a threat to liberty.³⁸ The Massachusetts towns that produced Shays's Rebellion had much in common with the Anti-Federalists. Most of the former voted against the new Constitution. Both distrusted a powerful, unrepresentative government in the hands of a wealthy and aristocratic elite.

³⁷ For details, see Robert Higgs, *Crisis and Leviathan: Critical Episodes in the Growth of American Government* (New York: Oxford University Press, 1987).

³⁸ Richards, pp. 152-158.