Was the Constitutional Convention a “Runaway?”

[Rob Natelson is the author of **The Original Constitution: What It Really Said and Meant** - an objective explanation of the Constitution as understood by the Founders.]


Atop St. Paul's Cathedral, London

There’s an old accusation leveled against the delegates to the 1787 Constitutional Convention. The Convention was a very long time ago, so the accusation shouldn’t matter any more. But it does matter, because some keep repeating it for political purposes even today.

The accusation goes like this: *“When the Confederation Congress called the convention, it did so ‘for the sole and express purpose of revising the Articles of Confederation.’ But the delegates ignored their instructions. Instead of merely proposing amendments to the Articles of Confederation, they trashed the Articles and wrote a whole new Constitution instead.”*

Of course, it is true that they wrote a new Constitution. But did they really exceed their authority? Actually, as to all but a few delegates, the true verdict of history is: **NOT GUILTY!**

Historians point out that the Framers only recommended a government; they did not impose one. They also point out that everything turned out for the best, and they plead the “revolutionary” nature of the times.

But there is another and better defense: **It is simply not true that most of the delegates exceeded their power.** On the contrary, the overwhelming majority had full authority to do what they did. And most who didn’t have authority, never signed. Those who accuse the convention of being a “runaway” are ignorant of the law and language of the time, and of what actually happened in the lead-up to the convention.

Here are the facts:

On September 14, 1786 the Annapolis Convention recommended to the states (not to Congress) a new gathering “to take into consideration the situation of the United States, to devise such further provisions as shall appear to them necessary to render the constitution of the Federal Government adequate to the exigencies of the Union.” As you can see, that proposal was not limited to merely changing the Articles.

The Confederation Congress appointed a committee, but took no other action. Over the next few months, seven of the 13 states authorized appointment of delegates. None of those states limited their delegates to proposing amendments to the Articles. On the contrary, the authorization was very broad. Typical was Georgia, which empowered its delegates to discuss, “all such Alterations and farther Provisions as may be necessary to render the Federal Constitution adequate to the exigencies of the Union.” All eighteenth-century dictionaries make it clear that, in the discourse of the time, the term “constitution” usually meant the entire political system, not merely the Articles or any particular document. (Just as we speak today of Britain’s “constitution.”) In other words, the delegates were given full power to suggest changes in the entire political system.

In February, 1787, a congressional committee report suggested that Congress lend moral support to the convention idea, also urging that delegates receive very broad authority. However, the congressmen from New York (then a notoriously Anti-Federalist state) objected. So Congress toned down the recommendation to suggest the convention be limited only to amending the Articles.

But Congress’s resolution was a legal irrelevancy. The resolution itself said that it was merely a statement of

opinion. Under the Articles, Congress had no power to call a convention, and certainly no power to limit it. Under the law of the time, only the states empowered their delegates and set the limits. The states did so in formal documents called “credentials” or “commissions.”

Those who charge a “runaway” assume that Congress’s resolution was legally binding, but everyone at the time realized it was a suggestion only.

In the ensuing weeks, the six remaining states made their decisions. South Carolina, Maryland, and Connecticut disregarded Congress’s suggested limits and gave their delegates enough power to consider the entire political system. Rhode Island elected not to participate. Two states—Massachusetts and New York—sent delegates, but accepted the restriction in Congress’s resolution.

So twelve states attended the convention, and all but two had given their delegates authority to recommend scrapping the Articles. Delaware had insisted that its delegates not vote for any measure that abandoned the “one state, one vote” rule in the unicameral Confederation Congress. But you could make a good argument that this didn’t apply to an entirely new Congress with a bicameral legislature in which the Senate represented all states equally.

At the convention, it soon became clear that the overwhelming majority of delegates and delegations wanted to scrap the Articles and had authority to do so. This put the three New York representatives and the four Massachusetts representatives in a quandary. What should they do?

One Massachusetts delegate, Caleb Strong, had to return home to a sick wife, so he was spared a decision. Another Massachusetts delegate (Elbridge Gerry – pronounced “Gherry”) refused to sign. The other two did sign.

Of the three New Yorkers, two concluded the convention had gone beyond the scope of their personal authority, so they properly returned home. The other New York delegate was Alexander Hamilton—a brilliant, but not entirely scrupulous personality—who did participate and sign. However, he did so only as an individual, not as a representative of his state, since when the majority of the New York delegation left, his authority vanished.

Bottom line: Of the 55 delegates, 48 had authority to go beyond amending the Articles. Of the seven who did not, only three opted to sign the Constitution–and only two did so in an official capacity.

Hardly a “runaway.”

Tags: amendment applications, amendments convention, Article 5, Article V, balanced budget amendment, constitution, constitutional amendment, constitutional convention, constitutional law, convention for proposing amendments, Natelson Rob, Rob Natelson

Comments