

Handout D: Excerpts from *Brutus II*, Brutus, November 1, 1787

To the Citizens of the State of New-York.

...When a building is to be erected which is intended to stand for ages, the foundation should be firmly laid. The constitution proposed to your acceptance, is designed not for yourselves alone, but for generations yet unborn. **The principles, therefore, upon which the social compact is founded, ought to have been clearly and precisely stated, and the most express and full declaration of rights to have been made — But on this subject there is almost an entire silence.**

If we may collect the sentiments of the people of America, from their own most solemn declarations, **they hold this truth as self evident, that all men are by nature free. No one man, therefore, or any class of men, have a right, by the law of nature, or of God, to assume or exercise authority over their fellows. The origin of society then is to be sought, not in any natural right which one man has to exercise authority over another, but in the united consent of those who associate. ...The common good, therefore, is the end [goal] of civil government, and common consent, the foundation on which it is established. To effect this end, it was necessary that a certain portion of natural liberty should be surrendered, in order, that what remained should be preserved: ...So much... must be given up, as will be sufficient to enable those, to whom the administration of the government is committed, to establish laws for the promoting the happiness of the community, and to carry those laws into effect. But it is not necessary, for this purpose,**

that individuals should relinquish all their natural rights. Some are of such a nature that they cannot be surrendered. Of this kind are the rights of conscience, the right of enjoying and defending life, etc. Others are not necessary to be resigned, in order to attain the end for which government is instituted, these therefore ought not to be given up. To surrender them, would counteract the very end of government, to wit, the common good. From these observations it appears, that in forming a government on its true principles, the foundation should be laid in the manner I before stated, by expressly **reserving to the people such of their essential natural rights, as are not necessary to be parted with.** The same reasons which at first induced mankind to associate and institute government, will operate to influence them to observe this precaution. **If they had been disposed to conform themselves to the rule of immutable righteousness, government would not have been requisite. It was because one part exercised fraud, oppression, and violence on the other, that men came together, and agreed that certain rules should be formed, to regulate the conduct of all, and the power of the whole community lodged in the hands of rulers to enforce an obedience to them. But rulers have the same propensities as other men; they are as likely to use the power with which they are vested for private purposes, and to the injury and oppression of those over whom they are placed, as individuals in a state of nature are to injure and oppress one another. It is therefore as proper that bounds should be set to their authority, as that government should have at**

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first been instituted to restrain private injuries.

This principle, which seems so evidently founded in the reason and nature of things, is confirmed by universal experience. Those who have governed, have been found in all ages ever active to enlarge their powers and abridge the public liberty... From this it appears, that at a time when the pulse of liberty beat high and when an appeal was made to the people to form constitutions for the government of themselves, **it was their universal sense, that such declarations should make a part of their frames of government. It is therefore the more astonishing, that this grand security, to the rights of the people,** is not to be found in this constitution.

... To set this matter in a clear light, permit me to instance **some of the articles of the bills of rights of the individual states, and apply them to the case in question.**

For the security of life, in criminal prosecutions, the bills of rights of most of the states have declared, that no man shall be held to answer for a crime until he is made fully acquainted with the **charge brought against him; he shall not be compelled to accuse, or furnish evidence against himself** — The witnesses against him shall be brought face to face, and he shall be fully heard by himself or counsel. That it is essential to the security of life and liberty, that **trial of facts be in the vicinity where they happen.** Are not provisions of this kind as necessary in the general government, as in that of a particular state? The powers vested in the new Congress extend in many cases to life; they are authorized to provide for the punishment of a variety of capital crimes, and no restraint is laid upon them in its exercise, save only, that “the trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be in the state where the said crimes shall have been committed...

For the security of liberty it has been declared, “that **excessive bail** should not be required, nor excessive fines imposed, nor cruel or unusual punishments inflicted...

For the purpose of securing **the property** of the citizens, it is declared by all the states, “that in all controversies at law, respecting property, the ancient mode of trial by jury is one of the best securities of the rights of the people, and ought to remain sacred and inviolable.”

Does not the same necessity exist of reserving this right, under this national compact, as in that of these states? Yet nothing is said respecting it. In the bills of rights of the states it is declared, that a **well regulated militia** is the proper and natural **defense** of a free government — That as standing armies in time of peace are dangerous, they are not to be kept up, and that the military should be kept under strict subordination to, and controlled by the civil power.

The same security is as necessary in this constitution, and much more so; for the general government will have the sole power to raise and to pay armies, and are under no control in the exercise of it; yet nothing of this is to be found in this new system.

I might proceed to instance a number of other rights, which were as necessary to be reserved, such as, that **elections should be free, that the liberty of the press** should be held sacred; but the instances adduced, are sufficient to prove, that this argument is without foundation. — Besides, it is evident, that **the reason here assigned was not the true one, why the framers of this constitution omitted a bill of rights; if it had been, they would not have made certain reservations, while they totally omitted others of more importance.** We find they have, in the 9th section of the first article, declared, that the writ of ***habeas corpus*** shall not be suspended, unless in

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cases of rebellion — that no **bill of attainder**, or ex post facto law, shall be passed — that no title of nobility shall be granted by the United States, &c. If every thing which is not given is reserved, what propriety is there in these exceptions? ...

So far it is from being true, that a bill of rights is less necessary in the general constitution than in those of the states, the contrary is evidently the fact. — This system, if it is possible for the people of America to accede to it, will be an original compact; and being the last, will, in the nature of things, vacate every former agreement inconsistent with it. For it being a plan of government received and ratified by the whole people, all other forms, which are in existence at the time of its adoption, must yield to it. This is expressed in positive and unequivocal terms, in the 6th article, “That this constitution and the laws of the United States, which shall be made in pursuance thereof, and all treaties made, or which shall be made, under the authority of the United States, shall be the **supreme law** of the land; and the judges in every state shall be bound thereby, any thing in the constitution, or laws of any state, to the contrary notwithstanding...

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**; of what avail will the constitutions of the respective states be to preserve the rights of its citizens? ... No privilege, reserved by the bills of rights, or secured by the state government, can limit the power granted by this, or restrain any laws made in pursuance of it. It stands therefore on its own bottom, and must receive a construction by itself without any reference to any other — And hence it was of the **highest importance, that the most precise and express declarations and reservations of rights** should have been made...

So clear a point is this, that I cannot help suspecting, that persons who attempt to persuade people, that such reservations were less necessary under this constitution than under those of the states, **are willfully endeavoring to deceive, and to lead you into an absolute state of vassalage** [subjection; servitude].

Critical Thinking Questions

1. Brutus wrote, “The principles, therefore, upon which the social compact is founded, ought to have been clearly and precisely stated, and the most express and full declaration of rights to have been made — But on this subject there is almost an entire silence.” List at least 6 – 8 of the principles that he believed should have been explicitly stated in the Constitution.
2. What are some specific elements that Brutus wrote are found in the state constitutions and are at least as important to be listed in the general Constitution? List at least 5.
3. Why was Brutus especially concerned about this passage from Article 6? “That this constitution and the laws of the United States...shall be the supreme law of the land; and the judges in every state shall be bound thereby, any thing in the constitution, or laws of any state, to the contrary notwithstanding...”?
4. What did Brutus warn about anyone who attempted to persuade the people that a bill of rights in the general Constitution was unnecessary?