Excerpts from Brutus No. 2

1 November 1787
To the Citizens of the State of New-York.
I flatter myself that my last address established this position, that to reduce the Thirteen States into one government, would prove the destruction of your liberties.

But lest this truth should be doubted by some, I will now proceed to consider its merits.

...[I]n forming a constitution for such a country, great care should be taken to limit and definite its powers, adjust its parts, and guard against an abuse of authority. How far attention has been paid to these objects, shall be the subject of future enquiry. 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

Annotations

In forming a government intended to last far into the future, great care must be taken to limit and make definite its powers. The principles (most important ideas and beliefs) on which the government is constructed must be spelled out.

Because men are by nature free, no one has a natural right to rule over others without their consent.

The goal of government is the common good.

To achieve the common good, it is necessary that the people give up a portion of their natural liberty, but only as much as is necessary to carry out laws for the happiness and safety of the community.
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 first been instituted to restrain private injuries.

This principle [that bounds should be set to rulers’ authority] 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. This has induced the people in all countries, where any sense of freedom remained, to fix barriers against the encroachments of their rulers. The country from which we have derived our origin, is an eminent example of this. Their magna charta and bill of rights have long been the

It is not necessary that the people give up all their liberty; government is limited.
Some natural rights cannot be surrendered. These include freedom of conscience and the right to defend oneself.

If people could be trusted to always be good to one another, government would not be needed.

All of history proves that people with governing power try to enlarge that power, and limits on power must be spelled out.
boast, as well as the security, of that nation. I need say no
more, I presume, to an American, than, that this principle
is a fundamental one, in all the constitutions of our own
states; there is not one of them but what is either founded
on a declaration or bill of rights, or has certain express
reservation of rights interwoven in the body of them. 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

All of the state constitutions include lists of specific rights that
belong to the people.

It is very surprising that a
constitution that creates such a
strong central government does
not include a bill of rights.

Consider examples of rights
that are listed in the state
constitutions, and should be listed
in a constitution for the general
(national) government.

Fair trials include the following:
being informed of the charges,
being protected from self-incrimination, being brought face
to face with witnesses, having the trial of the facts in the vicinity
where they happened, and
guarantee of a jury trial.

If one is sued in a civil matter, he/
she has the right to have the case
decided by a jury.
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 cases of rebellion—that no bill of attainder, or expost 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

A well-regulated militia under civilian control is a defense of free government.

Free elections and freedom of the press are additional essential rights.

It is even more important that these essential rights be guaranteed in the national constitution than in the states, because this new constitution creates a supremely powerful government that would apply to the entire country, as addressed in Article 6.
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.

“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.”

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? Should they be plead, the answer would be the constitution of the United States, and the laws made in pursuance thereof, is the supreme law, and all legislatures and judicial officers, whether of the general or state governments, are bound by oath to support it. 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.

This will appear the more necessary, when it is considered, that not only the constitution and laws made in pursuance thereof, but all treaties made, or which shall be made, under the authority of the United States, are the supreme law of the land, and supersede the constitutions of all the states. The power to make treaties, is vested in the president, by and with the advice and consent of two thirds of the senate.

The only limit on the power of the president to make treaties is that he get approval of two-thirds of the Senate.
I do not find any limitation, or restriction, to the exercise of this power. The most important article in any constitution may therefore be repealed, even without a legislative act. Ought not a government, vested with such extensive and indefinite authority to have been restricted by a declaration of rights? It certainly ought.

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 wilfully endeavouring to deceive, and to lead you into an absolute state of vassalage.

Brutus.

Anyone who tries to convince people that the national government does not need a list of essential rights is trying to deceive and lead the people into slavery.