

# Anti-Federalist Papers: “BRUTUS 1”

To the Citizens of the State of New-York.

When the public is called to investigate and decide upon a question in which not only the present members of the community are deeply interested, but upon which the happiness and misery of generations yet unborn is in great measure suspended, the benevolent mind cannot help feeling itself peculiarly interested in the result.

5 In this situation, I trust the feeble efforts of an individual, to lead the minds of the people to a wise and prudent determination, cannot fail of being acceptable to the candid and dispassionate part of the community. Encouraged by this consideration, I have been induced to offer my thoughts upon the present important crisis of our public affairs.

10 Perhaps this country never saw so critical a period in their political concerns. We have felt the feebleness of the ties by which these United States are held together, and the want of sufficient energy in our present confederation, to manage, in some instances, our general concerns. Various expedients have been proposed to remedy these evils, but none have succeeded. At length a Convention of the states has been assembled, they have formed a constitution which will now, probably, be submitted to the people to ratify or reject, who are  
15 the fountain of all power, to whom alone it of right belongs to make or unmake constitutions, or forms of government, at their pleasure. The most important question that was ever proposed to your decision, or to the decision of any people under heaven, is before you, and you are to decide upon it by men of your own election, chosen specially for this purpose. If the constitution, offered to [your acceptance], be a wise one, calculated to preserve the  
20 invaluable blessings of liberty, to secure the inestimable rights of mankind, and promote human happiness, then, if you accept it, you will lay a lasting foundation of happiness for millions yet unborn; generations to come will rise up and call you blessed. You may rejoice in the prospects of this vast extended continent becoming filled with freemen, who will assert the dignity of human nature. You may solace yourselves with the idea, that society, in this  
25 favored land, will fast advance to the highest point of perfection; the human mind will expand in knowledge and virtue, and the golden age be, in some measure, realized. But if, on the other hand, this form of government contains principles that will lead to the subversion of liberty — if it tends to establish a despotism, or, what is worse, a tyrannic aristocracy; then, if you adopt it, this only remaining asylum for liberty will be [shut] up, and posterity will  
30 execrate your memory. . . .

With these few introductory remarks I shall proceed to a consideration of this constitution:

The first question that presents itself on the subject is, whether a confederated government be the best for the United States or not? Or in other words, whether the thirteen United States should be reduced to one great republic, governed by one legislature, and under the direction  
35 of one executive and judicial; or whether they should continue thirteen confederated republics, under the direction and control of a supreme federal head for certain defined national purposes only?

This inquiry is important, because, 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  
40 executed, certainly and infallibly terminate in it.

This government is to possess absolute and uncontrollable power, legislative, executive and judicial, with respect to every object to which it extends, for by the last clause of section 8th, article 1st, it is declared “that the Congress shall have power to make all laws which shall be necessary and proper for carrying into execution the foregoing powers, and all other powers vested by this constitution, in the government of the United States; or in any department or office thereof.” And by the 6th article, it is declared “that this constitution, and the laws of the United States, which shall be made in pursuance thereof, and the 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 law of any state to the contrary notwithstanding.” It appears from these articles that there is no need of any intervention of the state governments, between the Congress and the people, to execute any one power vested in the general government, and that the constitution and laws of every state are nullified and declared void, so far as they are or shall be inconsistent with this constitution, or the laws made in pursuance of it, or with treaties made under the authority of the United States. — The government then, so far as it extends, is a complete one, and not a confederation. It is as much one complete government as that of New-York or Massachusetts, has as absolute and perfect powers to make and execute all laws, to appoint officers, institute courts, declare offences, and annex penalties, with respect to every object to which it extends, as any other in the world. So far therefore as its powers reach, all ideas of confederation are given up and lost. It is true this government is limited to certain objects, or to speak more properly, some small degree of power is still left to the states, but a little attention to the powers vested in the general government, will convince every candid man, that if it is capable of being executed, all that is reserved for the individual states must very soon be annihilated, except so far as they are barely necessary to the organization of the general government. The powers of the general legislature extend to every case that is of the least importance — there is nothing valuable to human nature, nothing dear to freemen, but what is within its power. It has authority to make laws which will affect the lives, the liberty, and property of every man in the United States; nor can the constitution or laws of any state, in any way prevent or impede the full and complete execution of every power given. The legislative power is competent to lay taxes, duties, imposts, and excises; — there is no limitation to this power, unless it be said that the clause which directs the use to which those taxes, and duties shall be applied, may be said to be a limitation; but this is no restriction of the power at all, for by this clause they are to be applied to pay the debts and provide for the common defense and general welfare of the United States; but the legislature have authority to contract debts at their discretion; they are the sole judges of what is necessary to provide for the common defense, and they only are to determine what is for the general welfare: this power therefore is neither more nor less, than a power to lay and collect taxes, imposts, and excises, at their pleasure; not only the power to lay taxes unlimited, as to the amount they may require, but it is perfect and absolute to raise them in any mode they please. No state legislature, or any power in the state governments, have any more to do in carrying this into effect, than the authority of one state has to do with that of another. In the business therefore of laying and collecting taxes, the idea of confederation is totally lost, and that of one entire republic is embraced. It is proper here to remark, that the authority to lay and collect taxes is the most important of any power that can be granted; it connects with it almost all other powers, or at least will in process of time draw all other after it; it is the great mean of protection, security, and defense, in a good government, and the great engine of oppression and tyranny in a bad one. This cannot fail of being the case, if we consider the contracted limits which are set by this constitution, to the late governments, on this article of raising money. No state can emit paper money — lay any duties, or imposts, on imports, or exports,

90 but by consent of the Congress; and then the net produce shall be for the benefit of the  
United States. The only mean therefore left, for any state to support its government and  
discharge its debts, is by direct taxation; and the United States have also power to lay and  
collect taxes, in any way they please. Every one who has thought on the subject, must be  
convinced that but small sums of money can be collected in any country, by direct taxes [;  
95 hence,] when the federal government begins to exercise the right of taxation in all its parts,  
the legislatures of the several states will find it impossible to raise monies to support their  
governments. Without money they cannot be supported, and they must dwindle away, and,  
as before observed, their powers [will be] absorbed in that of the general government.

100 It might be here shown, that the power in the federal legislative, to raise and support armies at  
pleasure, as well in peace as in war, and their control over the militia, tend, not only to a  
consolidation of the government, but the destruction of liberty. — I shall not, however, dwell  
upon these, as a few observations upon the judicial power of this government, in addition to  
the preceding, will fully evince the truth of the position.

105 The judicial power of the United States is to be vested in a supreme court, and in such  
inferior courts as Congress may from time to time ordain and establish. The powers of these  
courts are very extensive; their jurisdiction comprehends all civil causes, except such as arise  
between citizens of the same state; and it extends to all cases in law and equity arising under  
the constitution. One inferior court must be established, I presume, in each state at least, with  
the necessary executive officers appendant thereto. It is easy to see, that in the common  
110 course of things, these courts will eclipse the dignity, and take away from the respectability,  
of the state courts. These courts will be, in themselves, totally independent of the states,  
deriving their authority from the United States, and receiving from them fixed salaries; and in  
the course of human events it is to be expected, that they will swallow up all the powers of  
the courts in the respective states.

115 How far the clause in the 8th section of the 1st article may operate to do away all idea of  
confederated states, and to effect an entire consolidation of the whole into one general  
government, it is impossible to say. The powers given by this article are very general and  
comprehensive, and it may receive a construction to justify the passing almost any law. A  
120 power to make all laws, which shall be necessary and proper, for carrying into execution, all  
powers vested by the constitution in the government of the United States, or any department  
or officer thereof, is a power very comprehensive and definite, and may, for ought I know, be  
exercised in a such manner as entirely to abolish the state legislatures. Suppose the legislature  
of a state should pass a law to raise money to support their government and pay the state  
debt, may the Congress repeal this law, because it may prevent the collection of a tax which  
125 they may think proper and necessary to lay, to provide for the general welfare of the United  
States? For all laws made, in pursuance of this constitution, are the supreme law of the land,  
and the judges in every state shall be bound thereby, any thing in the constitution or laws of  
the different states to the contrary notwithstanding. — By such a law, the government of a  
particular state might be overturned at one stroke, and thereby be deprived of every means of  
130 its support.

It is not meant, by stating this case, to insinuate that the constitution would warrant a law of  
this kind; or unnecessarily to alarm the fears of the people, by suggesting, that the federal  
legislature would be more likely to pass the limits assigned them by the constitution, than that  
of an individual state, further than they are less responsible to the people. But what is meant

135 is, that the legislature of the United States are vested with the great and uncontrollable  
powers, of laying and collecting taxes, duties, imposts, and excises; of regulating trade,  
raising and supporting armies, organizing, arming, and disciplining the militia, instituting  
140 courts, and other general powers. And are by this clause invested with the power of making  
all laws, proper and necessary, for carrying all these into execution; and they may so exercise  
this power as entirely to annihilate all the state governments, and reduce this country to one  
single government. And if they may do it, it is pretty certain they will; for it will be found that  
the power retained by individual states, small as it is, will be a clog upon the wheels of the  
government of the United States; the latter therefore will be naturally inclined to remove it out  
of the way. Besides, it is a truth confirmed by the unerring experience of ages, that every man,  
145 and every body of men, invested with power, are ever disposed to increase it, and to acquire  
a superiority over every thing that stands in their way. This disposition, which is implanted in  
human nature, will operate in the federal legislature to lessen and ultimately to subvert the  
state authority, and having such advantages, will most certainly succeed, if the federal  
government succeeds at all. It must be very evident then, that what this constitution wants of  
150 being a complete consolidation of the several parts of the union into one complete  
government, possessed of perfect legislative, judicial, and executive powers, to all intents and  
purposes, it will necessarily acquire in its exercise and operation.

Let us now proceed to inquire, as I at first proposed, **whether it be best the thirteen United  
States should be reduced to one great republic, or not?** It is here taken for granted, that all  
155 agree in this, that whatever government we adopt, it ought to be a free one; that it should be  
so framed as to secure the liberty of the citizens of America, and such an one as to admit of a  
full, fair, and equal representation of the people. The question then will be, whether a  
government thus constituted, and founded on such principles, is practicable, and can be  
exercised over the whole United States, reduced into one state?

160 If respect is to be paid to the opinion of the greatest and wisest men who have ever thought or  
wrote on the science of government, we shall be constrained to conclude, that a free republic  
cannot succeed over a country of such immense extent, containing such a number of  
inhabitants, and these increasing in such rapid progression as that of the whole United States.  
Among the many illustrious authorities which might be produced to this point, I shall content  
165 myself with quoting only two.

The one is the Baron de Montesquieu, *Spirit of the Laws*,<sup>1</sup> Chap. xvi. Vol. I [Book VIII]. "It is  
natural to a republic to have only a small territory, otherwise it cannot long subsist. In a large  
republic there are men of large fortunes, and consequently of less moderation; there are trusts  
too great to be placed in any single subject; he has interest of his own; he soon begins to  
170 think that he may be happy, great and glorious, by oppressing his fellow citizens; and that he  
may raise himself to grandeur on the ruins of his country. In a large republic, the public good  
is sacrificed to a thousand views; it is subordinate to exceptions, and depends on accidents.  
In a small one, the interest of the public is easier perceived, better understood, and more  
within the reach of every citizen; abuses are of less extent, and of course are less protected."  
175 Of the same opinion is the Marquis Beccarari.<sup>2</sup>

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<sup>1</sup> This major work by the French political theorist was first published in 1748.

<sup>2</sup> Cesare Beccaria, 18th century political and economic theorist, lived from 1738 to 1794.

History furnishes no example of a free republic, anything like the extent of the United States. The Grecian republics were of small extent; so also was that of the Romans. Both of these, it is true, in process of time, extended their conquests over large territories of country; and the consequence was, that their governments were changed from that of free governments to those of the most tyrannical that ever existed in the world.

Not only the opinion of the greatest men, and the experience of mankind, are against the idea of an extensive republic, but a variety of reasons may be drawn from the reason and nature of things, against it. In every government, the will of the sovereign is the law. In despotic governments, the supreme authority being lodged in one, his will is law, and can be as easily expressed to a large extensive territory as to a small one. In a pure democracy the people are the sovereign, and their will is declared by themselves; for this purpose they must all come together to deliberate, and decide.

This kind of government cannot be exercised, therefore, over a country of any considerable extent; it must be confined to a single city, or at least limited to such bounds as that the people can conveniently assemble, be able to debate, understand the subject submitted to them, and declare their opinion concerning it.

In a free republic, although all laws are derived from the consent of the people, yet the people do not declare their consent by themselves in person, but by representatives, chosen by them, who are supposed to know the minds of their constituents, and to be possessed of integrity to declare this mind.

In every free government, the people must give their assent to the laws by which they are governed. This is the true criterion between a free government and an arbitrary one. The former are ruled by the will of the whole, expressed in any manner they may agree upon; the latter by the will of one, or a few. If the people are to give their assent to the laws, by persons chosen and appointed by them, the manner of the choice and the number chosen, must be such, as to possess, be disposed, and consequently qualified to declare the sentiments of the people; for if they do not know, or are not disposed to speak the sentiments of the people, the people do not govern, but the sovereignty is in a few. Now, in a large extended country, it is impossible to have a representation, possessing the sentiments, and of integrity, to declare the minds of the people, without having it so numerous and unwieldy, as to be subject in great measure to the inconveniency of a democratic government.

The territory of the United States is of vast extent; it now contains near three millions of souls, and is capable of containing much more than ten times that number. Is it practicable for a country, so large and so numerous as they will soon become, to elect a representation, that will speak their sentiments, without their becoming so numerous as to be incapable of transacting public business? It certainly is not.

In a republic, the manners, sentiments, and interests of the people should be similar. If this be not the case, there will be a constant clashing of opinions; and the representatives of one part will be continually striving against those of the other. This will retard the operations of government, and prevent such conclusions as will promote the public good. If we apply this remark to the condition of the United States, we shall be convinced that it forbids that we should be one government. The United States includes a variety of climates. The productions of the different parts of the union are very variant, and their interests, of consequence,

220 diverse. Their manners and habits differ as much as their climates and productions; and their  
sentiments are by no means coincident. The laws and customs of the several states are, in  
many respects, very diverse, and in some opposite; each would be in favor of its own interests  
and customs, and, of consequence, a legislature, formed of representatives from the  
225 respective parts, would not only be too numerous to act with any care or decision, but would  
be composed of such heterogeneous and discordant principles, as would constantly be  
contending with each other.

The laws cannot be executed in a republic, of an extent equal to that of the United States,  
with promptitude.

230 The magistrates in every government must be supported in the execution of the laws, either  
by an armed force, maintained at the public expense for that purpose; or by the people  
turning out to aid the magistrate upon his command, in case of resistance.

235 In despotic governments, as well as in all the monarchies of Europe, standing armies are kept  
up to execute the commands of the prince or the magistrate, and are employed for this  
purpose when occasion requires: But they have always proved the destruction of liberty, and  
[are] abhorrent to the spirit of a free republic. In England, where they depend upon the  
parliament for their annual support, they have always been complained of as oppressive and  
unconstitutional, and are seldom employed in executing of the laws; never except on  
extraordinary occasions, and then under the direction of a civil magistrate.

240 A free republic will never keep a standing army to execute its laws. It must depend upon the  
support of its citizens. But when a government is to receive its support from the aid of the  
citizens, it must be so constructed as to have the confidence, respect, and affection of the  
people. Men who, upon the call of the magistrate, offer themselves to execute the laws, are  
influenced to do it either by affection to the government, or from fear; where a standing army  
is at hand to punish offenders, every man is actuated by the latter principle, and therefore,  
245 when the magistrate calls, will obey: but, where this is not the case, the government must rest  
for its support upon the confidence and respect which the people have for their government  
and laws. The body of the people being attached, the government will always be sufficient to  
support and execute its laws, and to operate upon the fears of any faction which may be  
opposed to it, not only to prevent an opposition to the execution of the laws themselves, but  
also to compel the most of them to aid the magistrate; but the people will not be likely to  
250 have such confidence in their rulers, in a republic so extensive as the United States, as  
necessary for these purposes. The confidence which the people have in their rulers, in a free  
republic, arises from their knowing them, from their being responsible to them for their  
conduct, and from the power they have of displacing them when they misbehave: but in a  
republic of the extent of this continent, the people in general would be acquainted with very  
255 few of their rulers: the people at large would know little of their proceedings, and it would be  
extremely difficult to change them. The people in Georgia and New-Hampshire would not  
know one another's mind, and therefore could not act in concert to enable them to effect a  
general change of representatives. The different parts of so extensive a country could not  
possibly be made acquainted with the conduct of their representatives, nor be informed of the  
260 reasons upon which measures were founded. The consequence will be, they will have no  
confidence in their legislature, suspect them of ambitious views, be jealous of every measure  
they adopt, and will not support the laws they pass. Hence the government will be nerveless  
and inefficient, and no way will be left to render it otherwise, but by establishing an armed

265 force to execute the laws at the point of the bayonet — a government of all others the most to be dreaded.

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 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  
270 this nature, that would be continually arising.

In so extensive a republic, the great officers of government would soon become above the control 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  
275 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 always will be in large states, so as greatly to interest men to pursue them, and to be proper objects for ambitious and designing  
280 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.

285 These are some of the reasons by which it appears, that a free republic cannot long subsist over a country of the great extent of these states. If then this new constitution is calculated to consolidate the thirteen states into one, as it evidently is, it ought not to be adopted.

Though I am of opinion, that it is a sufficient objection to this government, to reject it, that it creates the whole union into one government, under the form of a republic, yet if this objection was obviated, there are exceptions to it, which are so material and fundamental,  
290 that they ought to determine every man, who is a friend to the liberty and happiness of mankind, not to adopt it. I beg the candid and dispassionate attention of my countrymen while I state these objections — they are such as have obtruded themselves upon my mind upon a careful attention to the matter, and such as I sincerely believe are well founded. There are many objections, of small moment, of which I shall take no notice — perfection is not to  
295 be expected in any thing that is the production of man — and if I did not in my conscience believe that this scheme was defective in the fundamental principles — in the foundation upon which a free and equal government must rest — I would hold my peace.

***BRUTUS.***

