**The Federalist No. 48**

**These Departments Should Not Be So Far Separated as to Have No Constitutional Control Over Each Other**

***New York Packet*  
Friday, February 1, 1788  
[James Madison]**

**To the People of the State of New York:**

IT WAS shown in the last paper that the political apothegm there examined does not require that the legislative, executive, and judiciary departments should be wholly unconnected with each other. I shall undertake, in the next place, to show that unless these departments be so far connected and blended as to give to each a constitutional control over the others, the degree of separation which the maxim requires, as essential to a free government, can never in practice be duly maintained.

It is agreed on all sides, that the powers properly belonging to one of the departments ought not to be directly and completely administered by either of the other departments. It is equally evident, that none of them ought to possess, directly or indirectly, an overruling influence over the others, in the administration of their respective powers. It will not be denied, that power is of an encroaching nature, and that it ought to be effectually restrained from passing the limits assigned to it. After discriminating, therefore, in theory, the several classes of power, as they may in their nature be legislative, executive, or judiciary, the next and most difficult task is to provide some practical security for each, against the invasion of the others. What this security ought to be, is the great problem to be solved.

Will it be sufficient to mark, with precision, the boundaries of these departments, in the constitution of the government, and to trust to these parchment barriers against the encroaching spirit of power? This is the security which appears to have been principally relied on by the compilers of most of the American constitutions. But experience assures us, that the efficacy of the provision has been greatly overrated; and that some more adequate defense is indispensably necessary for the more feeble, against the more powerful, members of the government. The legislative department is everywhere extending the sphere of its activity, and drawing all power into its impetuous vortex.

The founders of our republics have so much merit for the wisdom which they have displayed, that no task can be less pleasing than that of pointing out the errors into which they have fallen. A respect for truth, however, obliges us to remark, that they seem never for a moment to have turned their eyes from the danger to liberty from the overgrown and all-grasping prerogative of an hereditary magistrate, supported and fortified by an hereditary branch of the legislative authority. They seem never to have recollected the danger from legislative usurpations, which, by assembling all power in the same hands, must lead to the same tyranny as is threatened by executive usurpations.

In a government where numerous and extensive prerogatives are placed in the hands of an hereditary monarch, the executive department is very justly regarded as the source of danger, and watched with all the jealousy which a zeal for liberty ought to inspire. In a democracy, where a multitude of people exercise in person the legislative functions, and are continually exposed, by their incapacity for regular deliberation and concerted measures, to the ambitious intrigues of their executive magistrates, tyranny may well be apprehended, on some favorable emergency, to start up in the same quarter. But in a representative republic, where the executive magistracy is carefully limited; both in the extent and the duration of its power; and where the legislative power is exercised by an assembly, which is inspired, by a supposed influence over the people, with an intrepid confidence in its own strength; which is sufficiently numerous to feel all the passions which actuate a multitude, yet not so numerous as to be incapable of pursuing the objects of its passions, by means which reason prescribes; it is against the enterprising ambition of this department that the people ought to indulge all their jealousy and exhaust all their precautions.

The legislative department derives a superiority in our governments from other circumstances. Its constitutional powers being at once more extensive, and less susceptible of precise limits, it can, with the greater facility, mask, under complicated and indirect measures, the encroachments which it makes on the co-ordinate departments. It is not unfrequently a question of real nicety in legislative bodies, whether the operation of a particular measure will, or will not, extend beyond the legislative sphere. On the other side, the executive power being restrained within a narrower compass, and being more simple in its nature, and the judiciary being described by landmarks still less uncertain, projects of usurpation by either of these departments would immediately betray and defeat themselves. Nor is this all: as the legislative department alone has access to the pockets of the people, and has in some constitutions full discretion, and in all a prevailing influence, over the pecuniary rewards of those who fill the other departments, a dependence is thus created in the latter, which gives still greater facility to encroachments of the former.

I have appealed to our own experience for the truth of what I advance on this subject. Were it necessary to verify this experience by particular proofs, they might be multiplied without end. I might find a witness in every citizen who has shared in, or been attentive to, the course of public administrations. I might collect vouchers in abundance from the records and archives of every State in the Union. But as a more concise, and at the same time equally satisfactory, evidence, I will refer to the example of two States, attested by two unexceptionable authorities.

The first example is that of Virginia, a State which, as we have seen, has expressly declared in its constitution, that the three great departments ought not to be intermixed. The authority in support of it is Mr. Jefferson, who, besides his other advantages for remarking the operation of the government, was himself the chief magistrate of it. In order to convey fully the ideas with which his experience had impressed him on this subject, it will be necessary to quote a passage of some length from his very interesting *Notes on the State of Virginia*, p. 195. "All the powers of government, legislative, executive, and judiciary, result to the legislative body. The concentrating these in the same hands, is precisely the definition of despotic government. It will be no alleviation, that these powers will be exercised by a plurality of hands, and not by a single one. One hundred and seventy-three despots would surely be as oppressive as one. Let those who doubt it, turn their eyes on the republic of Venice. As little will it avail us, that they are chosen by ourselves. An *elective despotism* was not the government we fought for; but one which should not only be founded on free principles, but in which the powers of government should be so divided and balanced among several bodies of magistracy, as that no one could transcend their legal limits, without being effectually checked and restrained by the others. For this reason, that convention which passed the ordinance of government, laid its foundation on this basis, that the legislative, executive, and judiciary departments should be separate and distinct, so that no person should exercise the powers of more than one of them at the same time. *But no barrier was provided between these several powers.* The judiciary and the executive members were left dependent on the legislative for their subsistence in office, and some of them for their continuance in it. If, therefore, the legislature assumes executive and judiciary powers, no opposition is likely to be made; nor, if made, can be effectual; because in that case they may put their proceedings into the form of acts of Assembly, which will render them obligatory on the other branches. They have accordingly, *in many* instances, *decided rights* which should have been left to *judiciary controversy*, and *the direction of the executive, during the whole time of their session, is becoming habitual and familiar*."

The other State which I shall take for an example is Pennsylvania; and the other authority, the Council of Censors, which assembled in the years 1783 and 1784. A part of the duty of this body, as marked out by the constitution, was "to inquire whether the constitution had been preserved inviolate in every part; and whether the legislative and executive branches of government had performed their duty as guardians of the people, or assumed to themselves, or exercised, other or greater powers than they are entitled to by the constitution. " In the execution of this trust, the council were necessarily led to a comparison of both the legislative and executive proceedings, with the constitutional powers of these departments; and from the facts enumerated, and to the truth of most of which both sides in the council subscribed, it appears that the constitution had been flagrantly violated by the legislature in a variety of important instances.

A great number of laws had been passed, violating, without any apparent necessity, the rule requiring that all bills of a public nature shall be previously printed for the consideration of the people; although this is one of the precautions chiefly relied on by the constitution against improper acts of legislature.

The constitutional trial by jury had been violated, and powers assumed which had not been delegated by the constitution.

Executive powers had been usurped.

The salaries of the judges, which the constitution expressly requires to be fixed, had been occasionally varied; and cases belonging to the judiciary department frequently drawn within legislative cognizance and determination.

Those who wish to see the several particulars falling under each of these heads, may consult the journals of the council, which are in print. Some of them, it will be found, may be imputable to peculiar circumstances connected with the war; but the greater part of them may be considered as the spontaneous shoots of an ill-constituted government.

It appears, also, that the executive department had not been innocent of frequent breaches of the constitution. There are three observations, however, which ought to be made on this head: *first*, a great proportion of the instances were either immediately produced by the necessities of the war, or recommended by Congress or the commander-in-chief; *second*, in most of the other instances, they conformed either to the declared or the known sentiments of the legislative department; *third*, the executive department of Pennsylvania is distinguished from that of the other States by the number of members composing it. In this respect, it has as much affinity to a legislative assembly as to an executive council. And being at once exempt from the restraint of an individual responsibility for the acts of the body, and deriving confidence from mutual example and joint influence, unauthorized measures would, of course, be more freely hazarded, than where the executive department is administered by a single hand, or by a few hands.

The conclusion which I am warranted in drawing from these observations is, that a mere demarcation on parchment of the constitutional limits of the several departments, is not a sufficient guard against those encroachments which lead to a tyrannical concentration of all the powers of government in the same hands.

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# The Federalist No. 84

## Certain General and Miscellaneous Objections to the Constitution Considered and Answered

### *Independent Journal* Wednesday, July 16, Saturday, July 26, Saturday, August 9, 1788 [Alexander Hamilton]

#### To the People of the State of New York:

IN THE course of the foregoing review of the Constitution, I have taken notice of, and endeavored to answer most of the objections which have appeared against it. There, however, remain a few which either did not fall naturally under any particular head or were forgotten in their proper places. These shall now be discussed; but as the subject has been drawn into great length, I shall so far consult brevity as to comprise all my observations on these miscellaneous points in a single paper.

The most considerable of the remaining objections is that the plan of the convention contains no bill of rights. Among other answers given to this, it has been upon different occasions remarked that the constitutions of several of the States are in a similar predicament. I add that New York is of the number. And yet the opposers of the new system, in this State, who profess an unlimited admiration for its constitution, are among the most intemperate partisans of a bill of rights. To justify their zeal in this matter, they allege two things: one is that, though the constitution of New York has no bill of rights prefixed to it, yet it contains, in the body of it, various provisions in favor of particular privileges and rights, which, in substance amount to the same thing; the other is, that the Constitution adopts, in their full extent, the common and statute law of Great Britain, by which many other rights, not expressed in it, are equally secured.

To the first I answer, that the Constitution proposed by the convention contains, as well as the constitution of this State, a number of such provisions.

Independent of those which relate to the structure of the government, we find the following: Article 1, section 3, clause 7 -- "Judgment in cases of impeachment shall not extend further than to removal from office, and disqualification to hold and enjoy any office of honor, trust, or profit under the United States; but the party convicted shall, nevertheless, be liable and subject to indictment, trial, judgment, and punishment according to law." Section 9, of the same article, clause 2 -- "The privilege of the writ of habeas corpus shall not be suspended, unless when in cases of rebellion or invasion the public safety may require it." Clause 3 -- "No bill of attainder or ex-post-facto law shall be passed." Clause 7 -- "No title of nobility shall be granted by the United States; and no person holding any office of profit or trust under them, shall, without the consent of the Congress, accept of any present, emolument, office, or title of any kind whatever, from any king, prince, or foreign state." Article 3, section 2, clause 3 -- "The trial of all crimes, except in cases of impeachment, shall be by jury; and such trial shall be held in the State where the said crimes shall have been committed; but when not committed within any State, the trial shall be at such place or places as the Congress may by law have directed." Section 3, of the same article -- "Treason against the United States shall consist only in levying war against them, or in adhering to their enemies, giving them aid and comfort. No person shall be convicted of treason, unless on the testimony of two witnesses to the same overt act, or on confession in open court." And clause 3, of the same section -- "The Congress shall have power to declare the punishment of treason; but no attainder of treason shall work corruption of blood, or forfeiture, except during the life of the person attainted."

It may well be a question, whether these are not, upon the whole, of equal importance with any which are to be found in the constitution of this State. The establishment of the writ of *habeas corpus*, the prohibition of *ex post facto* laws, and of TITLES OF NOBILITY,*to which we have no corresponding provision in our Constitution*, are perhaps greater securities to liberty and republicanism than any it contains. The creation of crimes after the commission of the fact, or, in other words, the subjecting of men to punishment for things which, when they were done, were breaches of no law, and the practice of arbitrary imprisonments, have been, in all ages, the favorite and most formidable instruments of tyranny. The observations of the judicious Blackstone,[**1**](http://www.constitution.org/fed/federa84.htm#1) in reference to the latter, are well worthy of recital: "To bereave a man of life, [says he] or by violence to confiscate his estate, without accusation or trial, would be so gross and notorious an act of despotism, as must at once convey the alarm of tyranny throughout the whole nation; but confinement of the person, by secretly hurrying him to jail, where his sufferings are unknown or forgotten, is a less public, a less striking, and therefore *a more dangerous engine* of arbitrary government." And as a remedy for this fatal evil he is everywhere peculiarly emphatical in his encomiums on the *habeas corpus* act, which in one place he calls "the BULWARK of the British Constitution."[**2**](http://www.constitution.org/fed/federa84.htm#2)

Nothing need be said to illustrate the importance of the prohibition of titles of nobility. This may truly be denominated the corner-stone of republican government; for so long as they are excluded, there can never be serious danger that the government will be any other than that of the people.

To the second that is, to the pretended establishment of the common and state law by the Constitution, I answer, that they are expressly made subject "to such alterations and provisions as the legislature shall from time to time make concerning the same." They are therefore at any moment liable to repeal by the ordinary legislative power, and of course have no constitutional sanction. The only use of the declaration was to recognize the ancient law and to remove doubts which might have been occasioned by the Revolution. This consequently can be considered as no part of a declaration of rights, which under our constitutions must be intended as limitations of the power of the government itself.

It has been several times truly remarked that bills of rights are, in their origin, stipulations between kings and their subjects, abridgements of prerogative in favor of privilege, reservations of rights not surrendered to the prince. Such was MAGNA CHARTA, obtained by the barons, sword in hand, from King John. Such were the subsequent confirmations of that charter by succeeding princes. Such was the *Petition of Right* assented to by Charles I., in the beginning of his reign. Such, also, was the Declaration of Right presented by the Lords and Commons to the Prince of Orange in 1688, and afterwards thrown into the form of an act of parliament called the Bill of Rights. It is evident, therefore, that, according to their primitive signification, they have no application to constitutions professedly founded upon the power of the people, and executed by their immediate representatives and servants. Here, in strictness, the people surrender nothing; and as they retain every thing they have no need of particular reservations. "WE, THE PEOPLE of the United States, to secure the blessings of liberty to ourselves and our posterity, do *ordain* and*establish* this Constitution for the United States of America." Here is a better recognition of popular rights, than volumes of those aphorisms which make the principal figure in several of our State bills of rights, and which would sound much better in a treatise of ethics than in a constitution of government.

But a minute detail of particular rights is certainly far less applicable to a Constitution like that under consideration, which is merely intended to regulate the general political interests of the nation, than to a constitution which has the regulation of every species of personal and private concerns. If, therefore, the loud clamors against the plan of the convention, on this score, are well founded, no epithets of reprobation will be too strong for the constitution of this State. But the truth is, that both of them contain all which, in relation to their objects, is reasonably to be desired.

I go further, and affirm that bills of rights, in the sense and to the extent in which they are contended for, are not only unnecessary in the proposed Constitution, but would even be dangerous. They would contain various exceptions to powers not granted; and, on this very account, would afford a colorable pretext to claim more than were granted. For why declare that things shall not be done which there is no power to do? Why, for instance, should it be said that the liberty of the press shall not be restrained, when no power is given by which restrictions may be imposed? I will not contend that such a provision would confer a regulating power; but it is evident that it would furnish, to men disposed to usurp, a plausible pretense for claiming that power. They might urge with a semblance of reason, that the Constitution ought not to be charged with the absurdity of providing against the abuse of an authority which was not given, and that the provision against restraining the liberty of the press afforded a clear implication, that a power to prescribe proper regulations concerning it was intended to be vested in the national government. This may serve as a specimen of the numerous handles which would be given to the doctrine of constructive powers, by the indulgence of an injudicious zeal for bills of rights.

On the subject of the liberty of the press, as much as has been said, I cannot forbear adding a remark or two: in the first place, I observe, that there is not a syllable concerning it in the constitution of this State; in the next, I contend, that whatever has been said about it in that of any other State, amounts to nothing. What signifies a declaration, that "the liberty of the press shall be inviolably preserved"? What is the liberty of the press? Who can give it any definition which would not leave the utmost latitude for evasion? I hold it to be impracticable; and from this I infer, that its security, whatever fine declarations may be inserted in any constitution respecting it, must altogether depend on public opinion, and on the general spirit of the people and of the government.[**3**](http://www.constitution.org/fed/federa84.htm#3) And here, after all, as is intimated upon another occasion, must we seek for the only solid basis of all our rights.

There remains but one other view of this matter to conclude the point. The truth is, after all the declamations we have heard, that the Constitution is itself, in every rational sense, and to every useful purpose, A BILL OF RIGHTS. The several bills of rights in Great Britain form its Constitution, and conversely the constitution of each State is its bill of rights. And the proposed Constitution, if adopted, will be the bill of rights of the Union. Is it one object of a bill of rights to declare and specify the political privileges of the citizens in the structure and administration of the government? This is done in the most ample and precise manner in the plan of the convention; comprehending various precautions for the public security, which are not to be found in any of the State constitutions. Is another object of a bill of rights to define certain immunities and modes of proceeding, which are relative to personal and private concerns? This we have seen has also been attended to, in a variety of cases, in the same plan. Adverting therefore to the substantial meaning of a bill of rights, it is absurd to allege that it is not to be found in the work of the convention. It may be said that it does not go far enough, though it will not be easy to make this appear; but it can with no propriety be contended that there is no such thing. It certainly must be immaterial what mode is observed as to the order of declaring the rights of the citizens, if they are to be found in any part of the instrument which establishes the government. And hence it must be apparent, that much of what has been said on this subject rests merely on verbal and nominal distinctions, entirely foreign from the substance of the thing.

Another objection which has been made, and which, from the frequency of its repetition, it is to be presumed is relied on, is of this nature: "It is improper [say the objectors] to confer such large powers, as are proposed, upon the national government, because the seat of that government must of necessity be too remote from many of the States to admit of a proper knowledge on the part of the constituent, of the conduct of the representative body." This argument, if it proves any thing, proves that there ought to be no general government whatever. For the powers which, it seems to be agreed on all hands, ought to be vested in the Union, cannot be safely intrusted to a body which is not under every requisite control. But there are satisfactory reasons to show that the objection is in reality not well founded. There is in most of the arguments which relate to distance a palpable illusion of the imagination. What are the sources of information by which the people in Montgomery County must regulate their judgment of the conduct of their representatives in the State legislature? Of personal observation they can have no benefit. This is confined to the citizens on the spot. They must therefore depend on the information of intelligent men, in whom they confide; and how must these men obtain their information? Evidently from the complexion of public measures, from the public prints, from correspondences with theirrepresentatives, and with other persons who reside at the place of their deliberations. This does not apply to Montgomery County only, but to all the counties at any considerable distance from the seat of government.

It is equally evident that the same sources of information would be open to the people in relation to the conduct of their representatives in the general government, and the impediments to a prompt communication which distance may be supposed to create, will be overbalanced by the effects of the vigilance of the State governments. The executive and legislative bodies of each State will be so many sentinels over the persons employed in every department of the national administration; and as it will be in their power to adopt and pursue a regular and effectual system of intelligence, they can never be at a loss to know the behavior of those who represent their constituents in the national councils, and can readily communicate the same knowledge to the people. Their disposition to apprise the community of whatever may prejudice its interests from another quarter, may be relied upon, if it were only from the rivalship of power. And we may conclude with the fullest assurance that the people, through that channel, will be better informed of the conduct of their national representatives, than they can be by any means they now possess of that of their State representatives.

It ought also to be remembered that the citizens who inhabit the country at and near the seat of government will, in all questions that affect the general liberty and prosperity, have the same interest with those who are at a distance, and that they will stand ready to sound the alarm when necessary, and to point out the actors in any pernicious project. The public papers will be expeditious messengers of intelligence to the most remote inhabitants of the Union.

Among the many curious objections which have appeared against the proposed Constitution, the most extraordinary and the least colorable is derived from the want of some provision respecting the debts due *to* the United States. This has been represented as a tacit relinquishment of those debts, and as a wicked contrivance to screen public defaulters. The newspapers have teemed with the most inflammatory railings on this head; yet there is nothing clearer than that the suggestion is entirely void of foundation, the offspring of extreme ignorance or extreme dishonesty. In addition to the remarks I have made upon the subject in another place, I shall only observe that as it is a plain dictate of common-sense, so it is also an established doctrine of political law, that *"States neither lose any of their rights, nor are discharged from any of their obligations, by a change in the form of their civil government."*[**4**](http://www.constitution.org/fed/federa84.htm#4)

The last objection of any consequence, which I at present recollect, turns upon the article of expense. If it were even true, that the adoption of the proposed government would occasion a considerable increase of expense, it would be an objection that ought to have no weight against the plan.

The great bulk of the citizens of America are with reason convinced, that Union is the basis of their political happiness. Men of sense of all parties now, with few exceptions, agree that it cannot be preserved under the present system, nor without radical alterations; that new and extensive powers ought to be granted to the national head, and that these require a different organization of the federal government -- a single body being an unsafe depositary of such ample authorities. In conceding all this, the question of expense must be given up; for it is impossible, with any degree of safety, to narrow the foundation upon which the system is to stand. The two branches of the legislature are, in the first instance, to consist of only sixty-five persons, which is the same number of which Congress, under the existing Confederation, may be composed. It is true that this number is intended to be increased; but this is to keep pace with the progress of the population and resources of the country. It is evident that a less number would, even in the first instance, have been unsafe, and that a continuance of the present number would, in a more advanced stage of population, be a very inadequate representation of the people.

Whence is the dreaded augmentation of expense to spring? One source indicated, is the multiplication of offices under the new government. Let us examine this a little.

It is evident that the principal departments of the administration under the present government, are the same which will be required under the new. There are now a Secretary of War, a Secretary of Foreign Affairs, a Secretary for Domestic Affairs, a Board of Treasury, consisting of three persons, a Treasurer, assistants, clerks, etc. These officers are indispensable under any system, and will suffice under the new as well as the old. As to ambassadors and other ministers and agents in foreign countries, the proposed Constitution can make no other difference than to render their characters, where they reside, more respectable, and their services more useful. As to persons to be employed in the collection of the revenues, it is unquestionably true that these will form a very considerable addition to the number of federal officers; but it will not follow that this will occasion an increase of public expense. It will be in most cases nothing more than an exchange of State for national officers. In the collection of all duties, for instance, the persons employed will be wholly of the latter description. The States individually will stand in no need of any for this purpose. What difference can it make in point of expense to pay officers of the customs appointed by the State or by the United States? There is no good reason to suppose that either the number or the salaries of the latter will be greater than those of the former.

Where then are we to seek for those additional articles of expense which are to swell the account to the enormous size that has been represented to us? The chief item which occurs to me respects the support of the judges of the United States. I do not add the President, because there is now a president of Congress, whose expenses may not be far, if any thing, short of those which will be incurred on account of the President of the United States. The support of the judges will clearly be an extra expense, but to what extent will depend on the particular plan which may be adopted in regard to this matter. But upon no reasonable plan can it amount to a sum which will be an object of material consequence.

Let us now see what there is to counterbalance any extra expense that may attend the establishment of the proposed government. The first thing which presents itself is that a great part of the business which now keeps Congress sitting through the year will be transacted by the President. Even the management of foreign negotiations will naturally devolve upon him, according to general principles concerted with the Senate, and subject to their final concurrence. Hence it is evident that a portion of the year will suffice for the session of both the Senate and the House of Representatives; we may suppose about a fourth for the latter and a third, or perhaps half, for the former. The extra business of treaties and appointments may give this extra occupation to the Senate. From this circumstance we may infer that, until the House of Representatives shall be increased greatly beyond its present number, there will be a considerable saving of expense from the difference between the constant session of the present and the temporary session of the future Congress.

But there is another circumstance of great importance in the view of economy. The business of the United States has hitherto occupied the State legislatures, as well as Congress. The latter has made requisitions which the former have had to provide for. Hence it has happened that the sessions of the State legislatures have been protracted greatly beyond what was necessary for the execution of the mere local business of the States. More than half their time has been frequently employed in matters which related to the United States. Now the members who compose the legislatures of the several States amount to two thousand and upwards, which number has hitherto performed what under the new system will be done in the first instance by sixty-five persons, and probably at no future period by above a fourth or fifth of that number. The Congress under the proposed government will do all the business of the United States themselves, without the intervention of the State legislatures, who thenceforth will have only to attend to the affairs of their particular States, and will not have to sit in any proportion as long as they have heretofore done. This difference in the time of the sessions of the State legislatures will be clear gain, and will alone form an article of saving, which may be regarded as an equivalent for any additional objects of expense that may be occasioned by the adoption of the new system.

The result from these observations is that the sources of additional expense from the establishment of the proposed Constitution are much fewer than may have been imagined; that they are counterbalanced by considerable objects of saving; and that while it is questionable on which side the scale will preponderate, it is certain that a government less expensive would be incompetent to the purposes of the Union.

**Antifederalist No. 84 ON THE LACK OF A BILL OF RIGHTS**

By "BRUTUS"

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 mutual wants of men at first dictated the propriety of forming societies:

and when they were established, protection and defense pointed out the necessity of instituting

government. In a state of nature every individual pursues his own interest; in this pursuit it

frequently happened, that the possessions or enjoyments of one were sacrificed to the views and

designs of another; thus the weak were a prey to the strong, the simple and unwary were subject

to impositions from those who were more crafty and designing. In this state of things, every

individual was insecure; common interest, therefore, directed that government should be

established, in which the force of the whole community should be collected, and under such

directions, as to protect and defend every one who composed it. The common good, therefore, is

the end 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. How great a proportion of natural freedom is

necessary to be yielded by individuals, when they submit to government, I shall not inquire. So

much, however, must be given, 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 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, 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 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.

It has been said, in answer to this objection, that such declarations of rights, however requisite

they might be in the Constitutions of the States, are not necessary in the general Constitution,

because, "in the former case, every thing which is not reserved is given; but in the latter, the

reverse of the proposition prevails, and every thing which is not given is reserved." It requires

but little attention to discover, that this mode of reasoning is rather specious than solid. The

powers, rights and authority, granted to the general government by this Constitution, are as

complete, with respect to every object to which they extend, as that of any State government-it

reaches to every thing which concerns human happiness-life, liberty, and property are under its

control. There is the same reason, therefore, that the exercise of power, in this case, should be

restrained within proper limits, as in that of the State governments. 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." No man is secure of a trial in the county where he is

charged to have committed a crime; he may be brought from Niagara to New York, or carried

from Kentucky to Richmond for trial for an offense supposed to be committed. What security is

there, that a man shall be furnished with a full and plain description of the charges against him?

That he shall be allowed to produce all proof he can in his favor? That he shall see the witnesses

against him face to face, or that he shall be fully heard in his own defense by himself or counsel?

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. That all warrants, without

oath or affirmation, to search suspected places, or seize any person, his papers or property, are

grievous and oppressive."

These provisions are as necessary under the general government as under that of the individual

States; for the power of the former is as complete to the purpose of requiring bail, imposing

fines, inflicting punishments, granting search warrants, and seizing persons, papers, or property,

in certain cases, as the other.

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 their national compact, as in that

of the 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 ninth 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 ex post facto law, shall be passed,-that no title of nobility

shall be granted by the United States, etc. If every thing which is not given is reserved, what

propriety is there in these exceptions? Does this Constitution any where grant the power of

suspending the habeas corpus, to make ex post facto laws, pass bills of attainder, or grant titles of

nobility? It certainly does not in express terms. The only answer that can be given is, that these

are implied in the general powers granted. With equal truth it may be said, that all the powers

which the bills of rights guard against the abuse of, are contained or implied in the general ones

granted by this Constitution.

So far is it 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 wilt, 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 sixth 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 pled, 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

governments, 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 alt treaties 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. 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 endeavoring to deceive, and to lead you into an absolute state of vassalage.

BRUTUS