

Anti-Federalist eLesson: Brutus No. 1



Assignment: Read [Brutus No. 1](http://www.teachingamericanhistory.org) (www.teachingamericanhistory.org) or [Brutus No. 1 Excerpts Annotated](#) (Bill of Rights Institute Excerpts Annotated) and answer the questions at the end of the lesson.

In his first essay, Brutus considered whether or not the thirteen states should be reduced to one republic as the Federalists proposed. After examining various clauses in the Constitution, he determined that this would essentially create a federal government that will “possess absolute and uncontrollable power...” Brutus pointed to the Necessary and Proper Clause (3.8.18) and the Supremacy Clause (6.2.0) as sources of immense power conferred upon the federal government by the Constitution. According to Brutus, the two clauses, essentially render the various State governments powerless. He believed that the Constitution and laws of every state would nullified and declared void if they were, or shall be inconsistent with the Constitution. Brutus argued that under the Necessary and Proper Clause, Congress would be able to repeal state fundraising laws. If Congress believed that a state law may prevent the collection of a federal tax that is necessary and proper to provide for the general welfare of the United States, then Congress would have the authority to repeal the law under the necessary and proper clause. Furthermore, because all laws made in pursuance of the Constitution are the supreme law of the land, the states would have no recourse. Therefore, the government is complete, and no longer a confederation of smaller republics.

According to Brutus, there was no limit upon the legislative power to lay taxes, duties, imposts, and excises. Although this authority was technically limited to raising money to pay debts and provide for the general welfare and common defense, Brutus argued that these restrictions do not impose any actual limitation on the legislative powers under the Constitution. In reality, only the legislature had the authority to contract debts and determine what is necessary to provide for the general welfare and common defense of the nation. Therefore, the legislature’s authority to lay taxes and duties is rendered unlimited. No state can emit paper money, “lay any duties, or imposts, on imports, or exports” without consent of the Congress and “the net produce is for the benefit of the United States.” Therefore, the only recourse left for the states to support their own governments and discharge their debts is by direct taxation. This too however, could be eradicated by the federal government, who also has the power of direct taxation. Where the federal government exercises this essentially unlimited authority, it would be impossible for the states to raise money on their own behalf due to the limited monetary resources of its citizens. Without money, states cannot be supported and their powers would be absorbed by the federal government thus eliminating any sovereignty or autonomy left to the states.

Today, opinions differ over the appropriate size, scope, and power of the federal government. Regardless of personal views, it is hard to deny that Brutus makes several compelling arguments highlighting the potential dangers of a large national government.

- Which form of government (a large national republic or a confederation of small republics) is more likely to preserve and protect personal liberties and why?
 - Can a larger republic, based on the principle of consent of the governed, sufficiently protect the rights and liberties of the individual states and people, or is a confederation the only method of securing such liberty?
 - Should the federal legislature be able to repeal state laws in order to impose federal laws for the purpose of promoting the general welfare or common defense of the nation? If so, why? If not, why not?
 - Brutus argues that in a republic, "the manners, sentiments, and interests of the people should be similar...if not, there will be a constant clashing of opinions and the representatives of one part will be constantly striving against the other." Should a republic be made up of a small group of like-minded people? Or, is diversity of opinion beneficial to the success of a federal government?
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