

Brutus IV

29 November 1787

To the People of the State of New-York.

There can be no free government where the people are not possessed of the power of making the laws by which they are governed, either in their own persons, or by others substituted in their stead.

Experience has taught mankind, that legislation by representatives is the most eligible, and the only practicable mode in which the people of any country can exercise this right, either prudently or beneficially. But then, it is a matter of the highest importance, in forming this representation, that it be so constituted as to be capable of understanding the true interests of the society for which it acts, and so disposed as to pursue the good and happiness of the people as its ultimate end. **The object of every free government is the public good, and all lesser interests yield to it. That of every tyrannical government, is the happiness and aggrandisement of one, or a few, and to this the public felicity, and every other interest must submit.** — The reason of this difference in these governments is obvious. *The first is so constituted as to collect the views and wishes of the whole people in that of their rulers, while the latter is so framed as to separate the interests of the governors from that of the governed. **The principle of self love, therefore, that will influence the one to promote the good of the whole, will prompt the other to follow its own private advantage.*** The great art, therefore, in forming a good constitution, appears to be this, so to frame it, as that those to whom the power is committed shall be subject to the same feelings, and aim at the same objects as the people do, who transfer to them their authority. There is no possible way to effect this but by an equal, full and fair representation; this, therefore, is the great desideratum in politics. *However fair an appearance any government may make, though it may possess a thousand plausible articles and be decorated with ever so many ornaments, yet if it is deficient in this essential principle of a full and just representation of the people, it will be only like a painted sepulcher* — For, without this it cannot be a free government; let the administration of it be good or ill, it still will be a

government, not according to the will of the people, but according to the will of a few.

To test this new constitution then, by this principle, is of the last importance — It is to bring it to the touch-stone of national liberty, and I hope I shall be excused, if, in this paper. I pursue the subject commenced in my last number, to wit, the necessity of an equal and full representation in the legislature. — In that, I showed that it was not equal, because the smallest states are to send the same number of members to the senate as the largest, and, because the slaves, who afford neither aid or defence to the government, are to encrease the proportion of members. To prove that it was not a just or adequate representation, it was urged, that so small a number could not resemble the people, or possess their sentiments and dispositions. That the choice of members would commonly fall upon the rich and great, while the middling class of the community would be excluded. That in so small a representation there was no security against bribery and corruption.

The small number which is to compose this legislature, will not only expose it to the danger of that kind of corruption, and undue influence. which will arise from the gift of places of honor and emolument, or the more direct one of bribery, but it will also subject it to another kind of influence no less fatal to the liberties of the people, though it be not so flagrantly repugnant to the principles of rectitude. It is not to be expected that a legislature will be found in any country that will not have some of its members, who will pursue their private ends. and for which they will sacrifice the public good. Men of this character are, generally, artful and designing, and frequently possess brilliant talents and abilities; they commonly act in concert, and agree to share the spoils of their country among them; they will keep their object ever in view, and follow it with constancy. To effect their purpose, they will assume any shape, and, Proteus like. mould themselves into any form — where they find members proof against direct bribery or gifts of offices, they will endeavor to mislead their minds by specious and false reasoning, to impose upon their unsuspecting honesty by an affectation of zeal for the public good; they will form juntas, and hold out-door meetings; they will operate upon the good nature of their opponents, by a

thousand little attentions, and teize them into compliance by the earnestness of solicitation. Those who are acquainted with the manner of conducting business in public assemblies, know how prevalent art and address are in carrying a measure, even over men of the best intentions, and of good understanding. The firmest security against this kind of improper and dangerous influence, as well as all other, *is a strong and numerous representation*: in such a house of assembly, so great a number must be gained over, before the private views of individuals could be gratified that there could be scarce a hope of success. But in the federal assembly, seventeen men are all that is necessary to pass a law. It is probable, it will seldom happen that more than twenty-five will be requisite to form a majority, when it is considered what a number of places of honor and emolument will be in the gift of the executive, the powerful influence that great and designing men have over the honest and unsuspecting, by their art and address, their soothing manners and civilities, and their cringing flattery, joined with their affected patriotism; when these different species of influence are combined, it is scarcely to be hoped that a legislature, composed of so small a number, as the one proposed by the new constitution, will long resist their force.

A farther objection against the feebleness of the representation is. **that it will not possess the confidence of the people.** The execution of the laws in a free government must rest on this confidence, and this must be founded on the good opinion they entertain of the framers of the laws. **Every government must be supported, either by the people having such an attachment to it, as to be ready, when called upon, to support it, or by a force at the command of the government, to compel obedience.** The latter mode destroys every idea of a free government; for the same force that may be employed to compel obedience to good laws, might, and probably would be used to wrest from the people their constitutional liberties. — Whether it is practicable to have a representation for the whole union sufficiently numerous to obtain that confidence which is necessary for the purpose of internal taxation, and other powers to which this proposed government extends, is an important question. I am clearly of opinion, it is not, and therefore I have stated this in my first number, as one of the reasons against going into an entire consolidation of the

states — one of the most capital errors in the system, is that of extending the powers of the federal government to objects to which it is not adequate, which it cannot exercise without endangering public liberty, and which it is not necessary they should possess, in order to preserve the union and manage our national concerns; of this, however, I shall treat more fully in some future paper — But, however this may be. certain it is, **that the representation in the legislature is not so formed as to give reasonable ground for public trust.**

In order for the people safely to repose themselves on their rulers, they should not only be of their own choice. But it is requisite they should be acquainted with their abilities to manage the public concerns with wisdom. They should be satisfied that those who represent them are men of integrity, who will pursue the good of the community with fidelity; and will not be turned aside from their duty by private interest, or corrupted by undue influence; and that they will have such a zeal for the good of those whom they represent, as to excite them to be diligent in their service; **but it is impossible the people of the United States should have sufficient knowledge of their representatives, when the numbers are so few,** to acquire any rational satisfaction on either of these points. The people of this state will have very little acquaintance with those who may be chosen to represent them; a great part of them will, probably, not know the characters of their own members, much less that of a majority of those who will compose the federal assembly; they will consist of men, whose names they have never heard, and whose talents and regard for the public good, they are total strangers to; and they will have no persons so immediately of their choice so near them, of their neighbors and of their own rank in life, that they can feel themselves secure in trusting their interests in their hands. The representatives of the people cannot, as they now do, after they have passed laws, mix with the people, and explain to them the motives which induced the adoption of any measure, point out its utility, and remove objections or silence unreasonable clamours against it. — The number will be so small that but a very few of the most sensible and respectable yeomanry of the country can ever have any knowledge of them: **being so far removed from the people, their station will be elevated and important, and they will be considered as ambitious and designing. They will not be viewed by the people as part of**

themselves, but as a body distinct from them, and having separate interests to pursue; the consequence will be, that a perpetual jealousy will exist in the minds of the people against them; their conduct will be narrowly watched; their measures scrutinized; and their laws opposed, evaded, or reluctantly obeyed. This is natural, and exactly corresponds with the conduct of individuals towards those in whose hands they intrust important concerns. If the person confided in, be a neighbor with whom his employer is intimately acquainted, whose talents, he knows, are sufficient to manage the business with which he is charged, his honesty and fidelity unsuspected, and his friendship and zeal for the service of this principal unquestionable, he will commit his affairs into his hands with unreserved confidence, and feel himself secure; all the transactions of the agent will meet with the most favorable construction, and the measures he takes will give satisfaction. But, if the person employed be a stranger, whom he has never seen, and whose character for ability or fidelity he cannot fully learn — If he is constrained to choose him, because it was not in his power to procure one more agreeable to his wishes, he will trust him with caution, and be suspicious of all his conduct.

If then this government should not derive support from the good will of the people, it must be executed by force, or not executed at all; either case would lead to the total destruction of liberty. — The convention seemed aware of this, and have therefore provided for calling out the militia to execute the laws of the union. If this system was so framed as to command that respect from the people, which every good free government will obtain, this provision was unnecessary — the people would support the civil magistrate. ***This power is a novel one, in free governments*** — these have depended for the execution of the laws on the Posse Comitatus, and never raised an idea, that the people would refuse to aid the civil magistrate in executing those laws they themselves had made. I shall now dismiss the subject of the incompetency of the representation, and proceed, as I promised, **to shew, that, impotent as it is, the people have no security that they will enjoy the exercise of the right of electing this assembly, which, at best, can be considered but as the shadow of representation.**

By section 4, article I, the Congress are authorized, at any time, by law, to make, or alter, regulations respecting the time, place, and manner of holding elections for senators and representatives, except as to the places of choosing senators. *By this clause the right of election itself, is, in a great measure, transferred from the people to their rulers.* — One would think, that if any thing was necessary to be made a fundamental article of the original compact, it would be, that of fixing the branches of the legislature, so as to put it out of its power to alter itself by modifying the election of its own members at will and pleasure. When a people once resign the privilege of a fair election, they clearly have none left worth contending for.

It is clear that, under this article, the federal legislature may institute such rules respecting elections as to lead to the choice of one description of men. The weakness of the representation, tends but too certainly to confer on the rich and well-born, all honours; but the power granted in this article, may be so exercised, as to secure it almost beyond a possibility of controul. *The proposed Congress may make the whole state one district, and direct, that the capital (the city of New-York, for instance) shall be the place for holding the election; the consequence would be, that none but men of the most elevated rank in society would attend, and they would as certainly choose men of their own class; as it is true what the Apostle Paul saith, that "no man ever yet hated his own flesh, but nourisheth and cherisheth it."* — *They may declare that those members who have the greatest number of votes, shall be considered as duly elected; the consequence would be that the people, who are dispersed in the interior parts of the state, would give their votes for a variety of candidates, while any order, or profession, residing in populous places, by uniting their interests, might procure whom they pleased to be chosen — and by this means the representatives of the state may be elected by one tenth part of the people who actually vote.* This may be effected constitutionally, and *by one of those silent operations which frequently takes place without being noticed, but which often produces such changes as entirely to alter a government, subvert a free constitution, and rivet the chains on a free people before they perceive they are forged.* Had the power of regulating elections been left under the direction of the state legislatures, where the people are not only nominally but

substantially represented, it would have been secure; but if it was taken out of their hands, it surely ought to have been fixed on such a basis as to have put it out of the power of the federal legislature to deprive the people of it by law. Provision should have been made for marking out the states into districts, and for choosing, by a majority of votes, a person out of each of them of permanent property and residence in the district which he was to represent.

If the people of America will submit to a constitution that will vest in the hands of any body of men a right to deprive them by law of the privilege of a fair election, they will submit to almost any thing. Reasoning with them will be in vain, they must be left until they are brought to reflection by feeling oppression — ***they will then have to wrest from their oppressors, by a strong hand.*** that which they now possess, and which they may retain if they will exercise but a moderate share of prudence and firmness.

I know it is said that the dangers apprehended from this clause are merely imaginary, &c. On this, I would observe, that constitutions are not so necessary to regulate the conduct of good rulers as to restrain that of bad ones. — *Wise and good men will exercise power so as to promote the public happiness under any form of government.* If we are to take it for granted, that those who administer the government under this system, *will always pay proper attention to the rights and interests of the people,* nothing more was necessary than to say who should be invested with the powers of government, and leave them to exercise it at will and pleasure. **Men are apt to be deceived both with respect to their own dispositions and those of others.** Though this truth is proved by almost every page of the history of nations, to wit, *that power, lodged in the hands of rulers to be used at discretion, is almost always exercised to the oppression of the people, and the aggrandizement of themselves;* yet most men think if it was lodged in their hands they would not employ it in this manner. — ***Thus when the prophet Elisha told Hazael, "I know the evil that thou wilt do unto the children of Israel; their strong holds wilt thou set on fire, and their young men, wilt thou slay with the sword, and wilt dash their children, and rip up their women with child." Hazael had no idea that he ever should be guilty of such horrid cruelty, and said to the prophet, "Is thy servant a dog that he***

should do this great thing." Elisha answered, "The Lord hath shewed me that thou shalt be king of Syria." The event proved, that Hazael only wanted an opportunity to perpetrate these enormities without restraint, and he had a disposition to do them, though he himself knew it not.

Brutus.