

"John DeWitt"

II

Massachusetts, October 27, 1787

To the Free Citizens of the Commonwealth of Massachusetts.

In my last address upon the proceedings of the Federal Convention I endeavored to convince you of the importance of the subject, that it required a cool, dispassionate examination, and a thorough investigation, previous to its adoption -- that it was not a mere revision and amendment of our first Confederation, but a compleat System for the future government of the United States, and I may now add in preference to, and in exclusion of, all others heretofore adopted. -- It is not TEMPORARY, but in its nature, PERPETUAL. -- It is not designed that you shall be annually called, either to revise, correct, or renew it; but, that your posterity shall grow up under, and be governed by it, as well as ourselves. -- It is not so capable of alterations as you would at the first reading suppose; and I venture to assert, it never can be, unless by force of arms. The fifth article in the proceedings, it is true, expressly provides for an alteration under certain conditions, whenever "it shall be ratified by the Legislatures of three fourths of the several States, or by Conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by Congress." -- Notwithstanding which, such are the *"heterogeneous materials from which this System was formed,"* such is the difference of interest, different manners, and different local prejudices, in the different parts of the United States, that to obtain that majority of three fourths to any one single alteration, essentially affecting this or any other State, amounts to an absolute impossibility. The conduct of the Delegates in dissolving the Convention, plainly speaks this language, and no other. -- Their sentiments in their Letter to his Excellency the President of Congress are -- That this Constitution was the result of a spirit of amity -- that the parties came together disposed to concede as much as possible each to the other -- that mutual concessions and compromises did, in fact, take place, and all those which could, consistent with the peculiarity of their political situation. Their dissolution enforces the same sentiment, by confining you to the alternative of taking or refusing their doings in the gross. In this view, who is there to be found among us, who can seriously assert, that this Constitution, after ratification and being practiced upon, will be so easy of alteration? Where is the probability that a future Convention, in any future day, will be found possessed of a greater spirit of amity and mutual concession than the present? Where is the probability that three fourths of the States in that Convention, or three fourths of the Legislatures of the different States, whose interests differ scarcely in nothing short of every thing, will be so very ready or willing materially to change any part of this System, which shall be to the emolument of an individual State only? No, my fellow-citizens, as you are now obliged to take it in the whole, so you must hereafter administer it in whole, without the prospect of change, unless by again reverting to, a state of Nature, which will be ever opposed with success by those who approve of the Government in being.

That the want of a Bill of Rights to accompany this proposed System, is a solid objection to it, provided there is nothing exceptionable in the System itself, I do not assert. -- If, however, there is at any time, a propriety in having one, it would not have been amiss here. A people, entering into society, surrender such a part of their natural rights, as shall be necessary for the existence of

that society. They are so precious in themselves, that they would never be parted with, did not the preservation of the remainder require it. They are entrusted in the hands of those, who are very willing to receive them, who are naturally fond of exercising of them, and whose passions are always striving to make a bad use of them. -- They are conveyed by a written compact, expressing those which are given up, and the mode in which those reserved shall be secured. Language is so easy of explanation, and so difficult is it by words to convey exact ideas, that the party to be governed cannot be too explicit. The line cannot be drawn with too much precision and accuracy. The necessity of this accuracy and this precision encreases in proportion to the greatness of the sacrifice and the numbers who make it. -- That a Constitution for the United States does not require a Bill of Rights, when it is considered, that a Constitution for an individual State would, I cannot conceive. -- The difference between them is only in the numbers of the parties concerned they are both a compact between the Governors and Governed the letter of which must be adhered to in discussing their powers. That which is not expressly granted, is of course retained.

The Compact itself is a recital upon paper of that proportion of the subject's natural rights, intended to be parted with, for the benefit of adverting to it in case of dispute. Miserable indeed would be the situation of those individual States who have not prefixed to their Constitutions a Bill of Rights, if, as a very respectable, learned Gentleman at the Southward observes, "the People, when they established the powers of legislation under their separate Governments, invested their Representatives with every right and authority which they did not, in explicit terms, reserve; and therefore upon every question, respecting the jurisdiction of the House of Assembly, if the Frame of Government is silent, the jurisdiction of the House of Assembly, if the Frame of Government is silent, the jurisdiction is efficient and complete."¹ In other words, those powers which the people by their Constitutions expressly give them; they enjoy by positive grant, and those remaining ones, which they never meant to give them, and which the Constitutions say nothing about, they enjoy by tacit implication, so that by one means and by the other, they became possessed of the whole. -- This doctrine is but poorly calculated for the meridian of America, where the nature of compact, the mode of construing them, and the principles upon which society is founded, are so accurately known and universally diffused. That insatiable thirst for unconditional controul over our fellow-creatures, and the facility of sounds to convey essentially different ideas, produced the first Bill of Rights ever prefixed to a Frame of Government. The people, although fully sensible that they reserved every tittle of power they did not expressly grant away, yet afraid that the words made use of, to express those rights so granted might convey more than they originally intended, they chose at the same moment to express in different language those rights which the agreement did not include, and which they never designed to part with, endeavoring thereby to prevent any cause for future altercation and the intrusion into society of that doctrine of tacit implication which has been the favorite theme of every tyrant from the origin of all governments to the present day.

The proceedings of the Convention are now handed to you by your Legislature, and the second Wednesday in January is appointed for your final answer. To enable you to give that with propriety; that your future reflections may produce peace, however opposed the present issue of your present conduct may be to your present expectations, you must determine, that, in order to support with dignity the Federal Union, it is proper and fit, that the present Confederation shall be annihilated: -- That the future Congress of the United States shall be armed with the powers of

Legislation, Judgment and Execution. -- That annual elections in this Congress shall not be known, and the most powerful body, the Senate, in which a due proportion of representation is not preserved, and in which the smallest State has equal weight with the largest, be the longest in duration: -- That it is not necessary for the public good, that persons habituated to the exercise of power should ever be reminded from whence they derive it, by a return to the station of private citizens, but that they shall at all times at the expiration of the term for which they were elected to an office, be capable of immediate re-election to that same office: -- That you will hereafter risk the probability of having the Chief Executive Branch chosen from among you; and that it is wholly indifferent, both to you and your children after you, whether this future Government shall be administered within the territories of your own State, or at the distance of four thousand miles from them. -- You must also determine, that they shall have the exclusive power of imposts and the duties on imports and exports, the power of laying excises and other duties, and the additional power of laying internal taxes upon your lands, your goods, your chattels, as well as your persons at their sovereign pleasure: -- That the produce of these several funds shall be appropriated to the use of the United States, and collected by their own officers, armed with a military force, if a civil aid should not prove sufficient: -- that the power of organizing, arming and disciplining the militia shall be lodged in them, and this through fear that they shall not be sufficiently attentive to keeping so respectable a body of men as the yeomanry of this Commonwealth, compleatly armed, organized and disciplined; they shall have also the power of raising, supporting and establishing a standing army in time of peace in your several towns, and I see not why in your several houses: -- That should an insurrection or an invasion, however small, take place, in Georgia, the extremity of the Continent, it is highly expedient they should have the power of suspending the writ of Habeas Corpus in Massachusetts, and as long as they shall judge the public safety requires it: -- You must also say, that your present Supreme Judicial Court shall be an Inferior Court to a Continental Court, which is to be inferior to the Supreme Court of the United States: -- that from an undue bias which they are supposed to have for the citizens of their own States, they shall not be competent to determine title to your real estate, disputes which may arise upon a protested Bill of Exchange, a simple note of hand, or book debt, wherein your citizens shall be unfortunately involved with disputes of such or any other kind, with citizens either of other States or foreign States: In all such cases they shall have a right to carry their causes to the Supreme Court of the United States, whether for delay only or vexation; however distant from the place of your abode, or inconsistent with your circumstances: -- That such appeals shall be extended to matters of fact as well as law, and a trial of the cause by jury you shall not have a right to insist upon. -- In short, my fellow-citizens, previous to a capacity of giving a compleat answer to these proceedings, you must determine that the Constitution of your Commonwealth, which is instructive, beautiful and consistent in practice, which has been justly admired in Europe, as a model of perfection, and which the present Convention have affected to imitate, a Constitution which is especially calculated for your territory, and is made conformable to your genius, your habits, the mode of holding your estates, and your particular interests, shall be reduced in its powers to those of a City Corporation: -- The skeleton of it may remain, but its vital principle shall be transferred to the new Government: Nay, you must go still further, and agree to invest the new Congress with powers, which you have yet thought proper to withhold from your own present Government. -- All these, and more, which are contained in the proceedings of the Federal Convention, may be highly proper and necessary. -- In this overturn of all individual governments, in this new-fashioned set of ideas, and in this total dereliction of

those sentiments which animated us in 1775, the Political Salvation of the United States may be very deeply interested, but BE CAUTIOUS.

John DeWitt