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John De Witt II

Boston American Herald, 29 October 1787 (excerpts)

To the FREE CITIZENS of the COMMONWEALTH of MASSACHUSETTS.

In my last address upon the proceedings of the Fœderal 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 practised 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,¹ 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 is efficient and complete.” 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, altho' 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. . . .

. . . 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.

I. Under Article V of the Constitution, amendments were to be ratified either by the legislatures or conventions of three-fourths of the states. Amendments could be proposed by two-thirds of both houses of Congress or by a constitutional convention called by Congress at the request of two-thirds of the state legislatures. The Constitution does not consider what kind of vote was necessary in this constitutional convention to propose amendments.

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